

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

BRILEY NAYLOR *
a minor, by and through her natural *
parent and guardian *
KARAH NAYLOR, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 10-644V
Special Master Christian J. Moran

Filed: June 13, 2011

Attorneys' fees and costs; award in
the amount to which respondent does
not object.

UNPUBLISHED DECISION ON FEES AND COSTS¹

Lawrence G. Michel, Kennedy, Berkley Yarnevich & Williamson, Chartered, Salina, KS, for
Petitioner;

Vincent Matanoski, U.S. Department of Justice, Washington, D.C., for Respondent.

Petitioner Karah Naylor, as natural parent and guardian of her daughter Briley Naylor (“Briley”), filed an application for attorneys’ fees and costs on June 8, 2011. The Court awards the amount to which respondent does not object.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Ms. Naylor claimed that the diphtheria, tetanus, acellular pertussis and polio vaccines caused Briley to develop a mitochondrial disorder. See Petition, filed Sept. 24, 2010. Petitioner was unable to find an expert to establish causation and thus, voluntarily dismissed her case pursuant to Vaccine Rule 21.

Even though compensation was denied, a petitioner who brings her petition in good faith and who has a reasonable basis for the petition may be awarded attorneys' fees and costs. See 42 U.S.C. §300aa-15(e)(1). Here, petitioner's counsel filed initial medical records and affidavits to support her petition. Counsel also consulted an expert, but was unable to produce this report. Petitioner then reported to the court that she was contemplating dismissal. See Pet'r Status Report, filed May 9, 2011. Following this report, counsel took steps to resolve this case relatively quickly so as not to increase costs and expenses unnecessarily. Thus, because petitioner's counsel acted in good faith and there was a reasonable basis for proceeding, petitioner is eligible for an award of attorneys' fees and costs. Respondent does not contend that petitioner failed to satisfy these criteria.

Ms. Naylor seeks a total of **\$6,743.00** in attorneys' fees and costs for petitioner's counsel. Additionally, Ms. Naylor filed a statement of costs in compliance with General Order No. 9, stating that she incurred no litigation expenses while pursuing this claim. Respondent stated that she had no objection to this application for attorneys' fees and costs.

After reviewing the request, the court awards a check made payable to petitioner and petitioner's attorney in the amount of **\$6,743.00** for attorneys' fees and other litigation costs. The court thanks the parties for their cooperative efforts in resolving this matter.

The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.