

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

MONA PORTER,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 99-639V
Special Master Christian J. Moran

Filed: October 31, 2012

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

UNPUBLISHED DECISION ON FEES AND COSTS¹

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner;
Althea W. Davis, U.S. Department of Justice, Washington, D.C., for Respondent.

On July 27, 2012, petitioner Mona Porter filed her initial application for attorneys' fees and costs. On October 12, 2012, after discussions between the parties, petitioner filed a Stipulation of Fact Concerning Attorneys' Fees and Costs ("Stipulation"). The Court awards the amount to which respondent has not objected.

Ms. Porter claimed that she "was injured as a result of receiving hepatitis B vaccinations." Petition at 2. A decision by the undersigned denying compensation was issued on September 11, 2008. 2008 WL 4483740. The Court of Federal Claims reversed this decision and remanded with instructions to determine an award of damages for petitioner. Rotoli v. Sec'y of Health & Human Servs., 89 Fed. Cl. 71 (2009). On July 15, 2010, the undersigned issued a decision awarding damages based on the parties' proffer. 2010 WL 3061107. However, on November 22, 2011, the Federal Circuit

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

reversed the ruling by the Court of Federal Claims, finding that Ms. Porter was not entitled to compensation under the Vaccine Act. Porter v. Sec’y of Health & Human Servs., 663 F.3d 1242 (Fed. Cir. 2011) (rehearing en banc denied).

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). The Court’s 2009 Opinion directing compensation be awarded to petitioner justifies a finding of reasonable basis. Respondent does not contend that petitioner failed to satisfy these criteria. Thus, petitioner is eligible for an award of attorneys’ fees and costs.

Previously, Ms. Porter was awarded \$68,404.17 in interim attorneys’ fees and costs for the work of her attorneys in preparing for and taking this case to hearing. 2009 WL 4034795, at *2 (Fed. Cl. Spec. Mstr. Nov. 3, 2009).

Ms. Porter has now requested fees and costs for the remainder of the case. In her initial application for attorneys’ fees and costs, Ms. Porter requested a total of \$87,601.88 in attorneys’ fees and costs. This total included \$72,589.80 in attorneys’ fees, and \$15,012.08 in attorneys’ costs. The attorneys’ fees can be divided into the following phases:

Summary of Requested Attorneys’ Fees and Costs by Phase	
Motion for Review	\$17,223.00
Damages	\$25,033.00
Federal Circuit	\$28,040.10
Final Fees	\$2,293.70
Total Requested Fees in Initial Application	\$72,589.80
Costs	\$15,012.08
Total Requested Fees & Costs	\$87,601.88

After informal discussions, Ms. Porter amended her application and filed the above-referenced Stipulation, requesting a final award of attorneys’ fees and costs in the amount of **\$80,000.00**. Additionally, Ms. Porter filed a statement of costs in compliance with General Order No. 9, stating that she incurred **\$36.05** in costs while pursuing this claim. Respondent states that she does not object to a total award in the amount of **\$80,036.05** for attorneys’ fees and costs and petitioner’s costs.

A status conference to discuss petitioner’s application was held on October 26, 2012. After reviewing the request, the court awards the following:

1. **A lump sum payment of \$80,000.00 in the form of a check payable to petitioner's attorney, Ronald C. Homer, of the law firm Conway, Homer & Chin-Caplan, P.C., and petitioner, Mona Porter, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e);**
2. **A lump sum payment of \$36.05 in the form of a check payable to petitioner, Mona Porter.**

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.