

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

ROSA VETTESE, *
as Administratrix of the Estate of *
ARTHUR CRESPO, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 10-799V
Special Master Christian J. Moran

Filed: February 10, 2012

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

UNPUBLISHED DECISION ON FEES AND COSTS¹

Kevin B. Lynch, Scaffidi & Associates, New York, NY, for Petitioner;
Debra A. Filteau Begley, U.S. Department of Justice, Washington, D.C., for Respondent.

Petitioner Rosa Vettese, as administratrix of the estate of Arthur Crespo, filed an application for attorneys' fees and costs on February 8, 2012. 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¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

Petitioner claimed that the influenza vaccine caused her son to develop acute disseminated encephalomyelitis (“ADEM”). See Petition, filed Nov. 17, 2010. Petitioner sought compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (2006). Counsel for petitioner spent time gathering medical records and affidavits. Petitioner also filed an expert report from Dr. Cassiere, who discussed an association between the influenza vaccination and ADEM.

The Secretary filed her response to the case on June 22, 2011. In this report, respondent suggested that the statute of limitations might bar this claim. The Secretary also filed an expert report from Dr. Elijah Stommel. Dr. Stommel concluded that Mr. Crespo’s ADEM was not caused by his November 21, 2007 influenza vaccination.

A status conference was held on August 12, 2011. Following this conference, petitioner filed a motion to strike the notice continuing her petition, and subsequently filed a notice of intent to withdraw her petition. An order concluding proceedings was filed on August 25, 2011.

Even though compensation was not awarded, 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, after respondent questioned the compensability of the claim, counsel took steps to resolve this case relatively quickly so as not to increase costs and expenses unnecessarily. 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.

Petitioner seeks a total of **\$5,500.00** in attorneys’ fees and costs for petitioner’s counsel. Additionally, petitioner filed a statement of costs in compliance with General Order No. 9, stating that she incurred no reimbursable costs in pursuit of her claim. Respondent stated that she had no objection to this application for attorneys’ fees and costs.

After reviewing the request, the court awards **\$5,500.00** in 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

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.

IT IS SO ORDERED.

S/Christian J. Moran
Christian J. Moran
Special Master