

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

W. C.,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 07-456V
Special Master Christian J. Moran

Filed: August 26, 2013

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

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA., for Petitioner;
Debra A. Filteau Begley, United States Dep't of Justice, Washington, D.C. for Respondent.

UNPUBLISHED DECISION ON FEES AND COSTS¹

On August 23, 2013, petitioner filed a stipulation of fact concerning final attorneys' fees and costs in the above-captioned matter. Petitioner filed an application for attorneys' fees and costs ("Application") on August 16, 2013 to request at total of \$185,294.51. Upon review of petitioner's Application, respondent raised objections to certain items. Based on subsequent discussions, petitioner amended her application to request a total of \$ 176,287.33, an amount to which respondent does not object. The Court awards this amount.

On June 28, 2007, W.C. filed a petition for compensation alleging that the flu vaccine, which he received on December 13, 2004, caused him to develop, or, significantly aggravate his multiple sclerosis. On February 22, 2011, the undersigned issued a decision finding petitioner was not entitled to compensation. Decision, 2011 WL 4537877 (Fed. Cl. Feb. 22, 2011) Motion for review denied in relevant part, 100 Fed. Cl. 440 (Fed. Cl. 2011) aff'd, 704 F.3d 1352 (Fed. Cir. 2013).

Even though compensation was denied, a petitioner who brings a petition in good faith and who has a reasonable basis for the petition may be awarded attorneys' fees and costs. See 42

¹ When this decision was originally issued, the parties were notified that the decision would be posted in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). Petitioners were also notified that they could seek redaction pursuant to § 300aa-12(d)(4)(B); Vaccine Rule 18(b). Petitioner made a timely request for redaction and this decision is being issued with the name of the vaccinee redacted to his initials.

U.S.C. § 300aa–15(e)(1). Here, counsel for petitioner gathered and filed medical records, obtained an expert to testify on petitioner’s behalf, presented the case at hearing, and litigated the matter to the Federal Circuit. Thus, because petitioner acted in good faith and because there was a reasonable basis for proceeding, petitioner is eligible for reimbursement of costs. Respondent does not contend that petitioner failed to satisfy these criteria.

Petitioner seeks a total of **\$176,000.00** in attorneys’ fees and costs for his counsel. Additionally, in compliance with General Order No. 9, petitioner states that he incurred **\$287.33** in out-of-pocket litigation expenses while pursuing this claim. Respondent has no objection to the amount requested for attorneys’ fees and costs.

After reviewing the request, the Court awards the following:

- A. A lump sum of \$176,000.00 in the form of a check made payable to petitioner and petitioner’s attorney, Ronald C. Homer, of the law firm of Conway, Homer & Chin-Caplan, P.C., for attorneys’ fees and other litigation costs available under 42 U.S.C. § 300aa-15(e).**
- B. A lump sum of \$287.33 in the form of a check made payable to petitioner, for petitioner’s out-of-pocket litigation expenses.**

The Court thanks the parties for their cooperative efforts in resolving this matter. The Clerk shall enter judgment accordingly.²

Any questions may be directed to my law clerk, Mary Holmes, at (202) 357-6353.

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.