

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

SHERRY LERWICK, legal representative *
of a minor child, BRADEN C. LERWICK, *

Petitioner, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 06-847V
Special Master Christian J. Moran

Filed: May 26, 2010

Attorneys' fees and costs, interim
award, amount which is not disputed.

Curtis R. Webb, Esq., Webb, Webb & Guerry, Twin Falls, ID, for petitioner;
Alexis B. Babcock, Esq., United States Department of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION ON INTERIM ATTORNEYS' FEES AND COSTS*

Sherry Lerwick claims that a diphtheria, tetanus, acellular pertussis (DTaP) vaccine caused her minor son, Braden Lerwick, to suffer acute disseminated encephalomyelitis, also known as ADEM. Ms. Lerwick seeks compensation pursuant to the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10 et seq. (2006). Her case remains pending.

* Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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, a party has 14 days to identify and to move to delete such information before the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

Ms. Lerwick is now awarded, on interim basis, attorneys' fees and costs in the total amount of **\$114,567.67**. See Avera v. Sec'y of Health & Human Servs., 515 F.3d 1343, 1352 (Fed. Cir. 2008).

On March 2, 2010, Ms. Lerwick filed an application for an award of interim attorneys' fees and reimbursement of costs, seeking a total of \$138,744.17. This request includes work performed by Ms. Lerwick's former attorney, Andrew Dodd, who died before the hearing in this case and the work performed by Ms. Lerwick's current attorney, Curtis Webb, who represented Ms. Lerwick at a hearing. On April 1, 2010, respondent filed a response. On May 20, 2010, respondent filed a joint status report stating that the parties have agreed on a (reduced) amount for interim attorney's fees and costs to be awarded to Ms. Lerwick and to which respondent will not object.

Regardless of whether they entitled to compensation, petitioners who bring their petition in good faith and who have a reasonable basis for the petition may be awarded attorneys' fees and costs. See 42 U.S.C. § 300aa-15(e)(1). Respondent does not contend that Ms. Lerwick fails to satisfy this standard. Thus, Ms. Lerwick is entitled to an award of attorneys' fees and costs.¹

After a determination that Ms. Lerwick is entitled to an award of attorneys' fees and costs, the next question is to decide the reasonable amount. A review of the materials offered in support of the motion for interim attorneys' fees and costs indicates that the (reduced) requested amount is reasonable. Therefore, Ms. Lerwick is awarded the amount to which respondent did not object. This decision awards Ms. Lerwick all the attorneys' fees and costs through the date of her application.

There is no just reason to delay the entry of judgment on interim attorneys' fees and costs. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in petitioner's favor. Those fees and costs are awarded as follows:

- A. A lump sum of \$6,710.95 in the form of a check payable to petitioner only; and,**
- B. A lump sum payment of \$107,856.72, in the form of a check payable to petitioner and petitioner's counsel of record, Curtis R. Webb, of Webb, Webb & Guerry.**

¹ The finding that the petition was supported by good faith and reasonable basis is not intended to suggest whether Ms. Lerwick is entitled to compensation.

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

IT IS SO ORDERED.

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.