

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

STACEY HEINZELMAN, *

Petitioner, *

v. *

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

Respondent. *

No. 07-01V
Special Master Christian J. Moran

Filed: October 16, 2009

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

Richard Gage, Esq., Richard Gage, P.C., Cheyenne, WY, for petitioner;
Ryan Daniel Pyles, Esq., United States Department of Justice, Washington, D.C., for respondent.

UNPUBLISHED RULING ON INTERIM ATTORNEYS' FEES AND COSTS*

Stacey Heinzelman claimed that the flu vaccine caused her to develop Guillain-Barré syndrome. In a decision dated December 11, 2008, the undersigned held that Ms. Heinzelman was entitled to compensation.

Ms. Heinzelman is now awarded, on interim basis, attorneys' fees in the amount of **\$29,000.00**, costs incurred by her attorney in the amount of **\$36,616.80**, and **\$1,927.56** in costs borne by Ms. Heinzelman personally. The total amount awarded is **\$67,544.36**. See Avera v.

* Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

Sec’y of Health & Human Servs., 515 F.3d 1343, 1352 (Fed. Cir. 2008). This amount constitutes an amount that no reasonable litigant could dispute is owed Ms. Heinzelman.

On September 15, 2009, Ms. Heinzelman filed an application for an award of interim attorneys’ fees and reimbursement of costs. In her application, Ms. Heinzelman requested that her attorney, Richard Gage, be compensated at an hourly rate set by the Laffey matrix. Respondent’s objection to compensating attorneys at the rate set in the Laffey matrix is well-established. Whether petitioners’ attorneys should be compensated at this rate is a dispute that probably will be resolved by the Federal Circuit.

On October 7, 2009, the parties filed a Joint Stipulation Concerning Interim Attorneys’ Fees and Costs, which is attached as Appendix A. The Joint Stipulation indicates that in informal discussions, respondent raised objections to certain items in petitioner’s application. Based on these discussions, petitioner revised the request for interim fees and costs and respondent has no objection to this revised request. The Joint Stipulation states that the parties have agreed to defer the determination of whether Mr. Gage should be compensated at a rate set by the Laffey matrix until Ms. Heinzelman files a motion for an award of attorneys’ fees and costs at the end of her case.¹

A review of the materials offered in support of the motion for interim attorneys’ fees and costs indicates that the (reduced) requested amounts are reasonable. Therefore, Ms. Heinzelman is awarded the amount to which respondent did not object. This amount includes the following items:

Richard Gage, PC (fees)	\$29,000.00
Richard Gage, PC (costs)	\$36,616.80
Ms. Heinzelman’s costs	\$1,927.56
TOTAL	\$67,544.36

Ms. Heinzelman is entitled to an award of interim attorneys’ fees and attorneys’ costs that no reasonable litigant could dispute is owed to her. The special master determines that there is no just reason to delay the entry of judgment on interim attorneys’ fees and attorneys’ costs. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of

¹ The parties agreed that an hourly rate that could not be disputed for Mr. Gage was \$200 per hour. This amount is within the reasonable range, especially given the purpose of determining an amount to which no reasonable litigant could object.

However, the undersigned recently determined that Mr. Gage was entitled to an increase in his hourly rate due to inflation. The parties may wish to consider this point in future discussions about attorneys’ hourly rates.

court shall enter judgment in petitioners' favor for **\$67,544.36** in interim attorneys' fees and attorneys' costs. Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

IT IS SO ORDERED.

s/Christian J. Moran

Christian J. Moran
Special Master

A, B. In informal discussions, respondent raised certain objections to the number of hours requested. Based on these discussions, petitioner has amended her Application with regard to the number of hours for the professional services of Richard Gage to request reimbursement for 5 hours of professional services performed by Richard Gage in 2006; 38 hours in 2007; 90 hours in 2008; and 12 hours in 2009. Respondent does not object to an award based upon **145 hours** of professional services, divided by year as stated herein.

b. Hourly Rate: The parties do not agree on an appropriate hourly rate for Richard Gage, Esq. However, respondent recommends that Richard Gage’s hourly rate be set at \$200.00 per hour for all hours agreed to herein in paragraph 5(a). The parties agree that an interim award based on the hourly rate of \$200.00 should be entered at this time. However, **both parties expressly reserve the right to litigate the issue of the appropriate hourly rate for Richard Gage when petitioner files her final application for attorneys’ fees and costs at the conclusion of this case.** Should the Special Master determine that Richard Gage is entitled to an hourly rate greater than \$200.00 per hour for the time reflected in petitioner’s currently pending Application, then the difference between previously-awarded fees and the amount of fees which the Special Master determines that petitioner is entitled will be applied at the conclusion of this case.

c. Based on paragraphs 5(a) and 5(b) of this Stipulation, the parties request that an award of **\$29,000.00** be entered for the interim fees requested by petitioner for the services of her counsel, Richard Gage, but that the issue of an appropriate rate for Richard Gage be preserved for determination at the conclusion of petitioner’s case.

6. The parties now request that a decision awarding the interim attorneys’ fees and costs described in paragraphs 3, 4, and 5 of this Stipulation, totaling **\$67,544.36**, be issued. The only issue regarding the currently pending Application that remains open for further litigation at the conclusion of this case is the appropriate hourly rate to be awarded to petitioner’s counsel, Richard Gage, for Mr. Gage’s 145 hours of professional services, divided by year as stated above in paragraph 5(a), requested in the current Application.

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¹(...continued)

at Tab B on April 27 and 29, 2008, in terms of one-half the hours. The amount of fees for travel time to which the parties stipulate therefore reflects that such time should be compensated at half of petitioner’s counsel’s hourly rate.

Respectfully submitted,

s/ RICHARD GAGE
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DATED: October 7, 2009