

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 06-392V  
Filed: December 30, 2010**

\*\*\*\*\*

ROBERTA BORN,	*	
	*	
Petitioner,	*	
v.	*	Attorney Fees and Costs
	*	
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

\*\*\*\*\*

**DECISION ON ATTORNEY FEES AND COSTS<sup>1</sup>**

**Vowell**, Special Master:

In this case under the National Vaccine Injury Compensation Program,<sup>2</sup> I issued a decision on May 10, 2010, denying entitlement to compensation and dismissing this case. On December 28, 2010,<sup>3</sup> petitioner filed her application for attorney fees and costs in this matter.<sup>4</sup> The application indicates that petitioner had previously discussed her attorney fees and costs with respondent and reached the award amount stated therein to which respondent would not object.

In the application, in a supplemental filing made December 30, 2010, and in a telephonic status conference conducted December 30, 2010, counsel for petitioner explained his unsuccessful attempts to contact his client to ascertain whether she

---

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

<sup>2</sup> The applicable statutory provisions defining the program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006).

<sup>3</sup> On December 30, 2010, I granted petitioner's motion for leave to file the application out of time.

<sup>4</sup> On December 30, 2010, petitioner also filed an accounting of her attorney's hours and costs.

incurred any unreimbursed expenses in litigating this matter. Given his good faith efforts and documentation, I will act on petitioner's application without a statement pursuant to General Order #9. I note that Mrs. Born was granted leave to proceed with this case *in forma pauperis* on June 14, 2006, and thus she did not pay a filing fee. Mr. McDonnell has averred that his firm incurred most, if not all, costs for medical records and other litigation expenses. He has agreed to reimburse petitioner for any reasonable personal litigation costs compensable under the Vaccine Act from the award he receives.

I find that this petition was brought in good faith and that there existed a reasonable basis for the claim. Therefore, an award for fees and costs is appropriate, pursuant to 42 U.S.C. § 300aa-15(b) and (e)(1). Further, the proposed amount seems reasonable and appropriate. **Accordingly, I hereby award the total \$16,000.00<sup>5</sup> in the form of a check payable jointly to petitioner, Roberta Born, and petitioner's counsel, Michael T. McDonnell, III, Kutak Rock, LLP, for petitioner's attorney fees and costs.**

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.<sup>6</sup>

**IT IS SO ORDERED.**

**s/Denise K. Vowell**  
**Denise K. Vowell**  
Special Master

---

<sup>5</sup> This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

<sup>6</sup> Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).