

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 10-292V
Filed: March 23, 2012**

EDDA M. GONZALEZ, as Independent *
Administrator of the Estate of *
GUADALUPE G. GONZALEZ, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Attorney Fees and Costs

DECISION AWARDING ATTORNEY FEES AND COSTS¹

Vowell, Special Master:

In this case under the National Vaccine Injury Compensation Program,² I issued a decision on January 9, 2012, which adopted the parties' joint stipulation settling this case.

On March 5, 2012, petitioner filed both an Application for Attorneys' Fees and Costs, which included documentation supporting the application, along with a General Order #9 statement, and a Stipulation of Fact Concerning Attorneys' Fees and Costs. The stipulation indicates that petitioner informally shared her application with respondent and that the parties were able to reach an agreement as to some of the fees

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioners have 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.

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

and costs requested. The parties were unable to reach an agreement regarding petitioner's personally incurred costs. Stipulation at ¶ 3-4.

On March 20, 2012, petitioner filed Memorandum of Law in Support of an Award of Estate Costs ["Memo"]. The memorandum noted that respondent generally takes the position that attorney's fees and costs associated with estate proceedings in state court are not compensable under the Vaccine Act. Memo at 1. Acknowledging that there is a split of authority on whether the Vaccine Act intends to encompass estate or guardianship costs, petitioner requested that the costs of the estate proceeding in this case be deemed compensable. See *generally* Memo. Respondent has orally indicated that although she opposes payment of estate costs, she will not file a formal written response.

I have previously held that 42 U.S.C. § 300aa-15(e)(1) permits the payment of reasonable costs associated with the creation of a guardianship as "costs incurred in any proceeding on such petition" when the guardianship is required by respondent or the court as a condition precedent of receiving the damages award. *Gruber v. Sec'y, HHS*, No. 00-794V, 2009 WL 2135739, *11 (Fed. Cl. Spec. Mstr. June 24, 2009) vacated on other grounds, 91 Fed. Cl. 773 (2010). Here, petitioner was required under the Act to appoint an executor for Mr. Gonzalez's estate to be able to proceed with this case. See § 300aa-11(b)(1)(A); Rules of the Federal Court of Claim ["RCFC"] 25(a)(1). Thus, I conclude that reasonable costs incurred in the establishment of the estate are compensable.

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 \$39,374.15³ as follows:**

- **a lump sum of \$36,998.90 in the form of a check payable jointly to petitioner and petitioner's counsel of record, Maglio, Christopher & Toale, PA, for petitioner's attorney fees and costs, and**
- **a lump sum of \$2,375.25 in the form of a check payable to petitioner, Edda M. Gonzalez, for her personal litigation costs.**

³ 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).

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.⁴

IT IS SO ORDERED.

s/ Denise K. Vowell

Denise K. Vowell

Special Master

⁴ 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).