

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

No. 06-840V

Filed: January 23, 2012

(Not to be Published)

LYNNA TELLER, Parent and Next
Friend of Naiya N. Namoki, a minor,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Attorney Fees and Costs

DECISION ON ATTORNEY FEES AND COSTS¹

Vowell, Special Master:

In this case under the National Vaccine Injury Compensation Program,² I issued a Ruling on Entitlement on January 13, 2009, which held that petitioner had established entitlement to compensation for Naiya's seizure disorder.

On May 19, 2009, petitioner filed an interim fee petition, and on June 5, 2009, respondent filed a stipulation for fees. On June 8, 2009, I awarded petitioner interim fees in the amount of \$55,921.37. My decision specified that, "in accordance with the terms of the stipulation, this award does not preclude later adjudication of petitioner's counsel's compensable hourly rate for the 100 hours of attorney time now requested."

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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).

A damages hearing occurred in this case in February 2011, and on August 15, 2011, I issued a decision adopting the parties' proffer and stipulation regarding damages. Judgment entered on September 16, 2011.

Petitioner filed a motion for final attorney fees and costs on December 29, 2011. The total amount requested in the motion included attorney's final fees, attorney's adjusted rates from the interim fee petition award, attorney's costs, petitioner's costs, and the fees and costs incurred by Jaburg & Wilk PC, who assisted with the creation of a guardianship for the minor vaccinee. The motion included an accounting of her attorney's hours and expenses and a statement pursuant to General Order #9 setting forth her personal litigation costs. With the exception of the request for an adjustment of the hourly rate for the hours awarded in the interim fees and costs award, all of the fees and costs requested in the motion were incurred after my interim fee decision was issued.

On January 17, 2012, respondent filed a stipulation concerning attorney fees and costs. The stipulation notes that after informal discussions, petitioner now request an amended amount of \$100,375.00 to which respondent does not object. This amount is in addition to the fees and costs previously awarded in the interim award.

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 \$100,375.00³ as follows:**

- **a lump sum of \$100,000.00 in the form of a check payable jointly to petitioner, Lynna Teller, and petitioner counsel of record, Richard Gage, for petitioner's attorney fees and costs, and**
- **a lump sum of \$375.00 in the form of a check payable to petitioner, Lynna Teller, 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).