

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-246V

Filed: August 22, 2012

KEN HALEY and EVA HALEY, as the
Grandparents and Legal Guardians of
JADE HALEY, an Infant,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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NOT TO BE PUBLISHED

Special Master Zane

Stipulation; Order Concluding Proceedings;
Attorneys' Fees and Costs

Mark T. Sadaka, Law Offices of Sadaka & Associates, LLC, Englewood, NJ, for Petitioners;
Darryl R. Wishard, United States Dep't of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION ON ATTORNEYS' FEES AND COSTS¹

Zane, Special Master.

On August 22, 2012, the parties in the above-captioned case filed a Stipulation of Fact Regarding Attorneys' Fees and Costs (Stipulation) memorializing their agreement as to the appropriate amount of attorneys' fees and costs in this case. After informal discussions with Respondent, Petitioners request a total award of \$13,750.00. In accordance with General Order #9, Petitioners' counsel represents that Petitioners incurred no personal litigation costs. The undersigned awards the amount to which Respondent does not object.

Petitioners alleged that as a result of receiving the Hepatitis B, Haemophilus influenza type B (Hib), Pneumococcal conjugate (PCV), and rotavirus vaccines on April 23, 2008, their granddaughter, Jade Haley, suffered from hydrocephalus, and that this condition was either

¹ The undersigned intends to post this decision on the website of the United States Court of Federal Claims, 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)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire ruling will be available to the public. *Id.*

caused by or significantly aggravated by her receipt of the vaccines. *See* Amended Petition at 2-3. Petitioners did not file an expert report to establish causation, and on August 20, 2012, filed a joint stipulation pursuant to Vaccine Rule 21(a)(1)(B), agreeing to voluntarily dismiss their case. Respondent agreed to the stipulation, but reserved the right to object to any application for attorneys' fees and costs. *See* Stipulation of Dismissal at 1. The undersigned issued an Order Concluding Proceedings on August 21, 2012.

Despite not being awarded compensation, Petitioners may still be awarded attorneys' fees and costs, when a petition is brought in good faith and has a reasonable basis. *See* 42 U.S.C. § 300aa-15(e)(1). Here, at the outset of this case, Petitioners appeared to have a reasonable basis, and counsel for Petitioners spent time preparing the case, gathering medical records and filing affidavits for Petitioners. But, when counsel was unable to secure an expert that could support Petitioners' claim for causation, it became evident to counsel that the case could not proceed. At that point, counsel for Petitioners took reasonable action by filing the motion for voluntary dismissal to get a quick resolution to the matter, thereby minimizing additional expenditure of resources and avoiding additional costs and expenses. In so doing, Petitioners' counsel acted in good faith and had a reasonable basis for proceeding in that manner. Respondent does not contend that Petitioners failed to satisfy these criteria. Thus, Petitioners are eligible for an award of attorneys' fees and costs.

The parties have now stipulated that \$13,750.00 is a reasonable amount to be awarded for attorneys' fees and costs. After reviewing the request, the undersigned finds the stipulated amount of \$13,750.00, in attorneys' fees and costs to be reasonable. Based on the request's reasonableness and pursuant to Vaccine Rule 13, the undersigned **GRANTS** the parties' request as outlined in the Stipulation. The judgment shall reflect that Petitioners are awarded attorneys' fees and costs as follows:

in a check made payable jointly to Petitioners (Ken Haley and Eva Haley, as the Grandparents and Legal Guardians of Jade Haley) and Petitioners' counsel (Mark Sadaka of the Law Offices of Sadaka Associates, LLC), in the amount of \$13,750.00.

The Court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/ Daria Zane
Daria J. Zane
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.