

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-328V

Filed: February 16, 2012

MARY SAMSOM, mother of
DANIELLE SOUSANI, deceased,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Special Master Zane

Stipulation; attorneys' fees and costs

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner;
Glenn A. MacLeod, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

ZANE, Special Master.

On February 15, 2012, the parties in the above-captioned case filed a Stipulation of Fact for Attorneys' Fees and Costs (Stipulation) memorializing their agreement as to the appropriate amount of attorneys' fees and costs in this case. Petitioner requests a total award of \$21,270.84. In accordance with General Order #9, Petitioner's counsel represents that Petitioner incurred no personal litigation costs. The undersigned awards the amount to which Respondent does not object.

Petitioner, Mary Samsom, filed a petition for vaccine injury compensation on May 27, 2010, on behalf of her deceased daughter, Danielle Sousani. The petition alleged that Danielle's death on June 25, 2008, resulted from her receipt of a hepatitis B (Hep B), inactivated polio

¹ The undersigned intends to post this decision on the United States Court of Federal Claims's 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)). 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.

(IPV), Diphtheria-Tetanus-acellular-Pertussis (DTaP), haemophilus influenzae type B (Hib), pneumococcal conjugate (PCV) and rotavirus (RV) vaccinations.

Petitioner filed medical records and affidavit(s) but was unable to secure an expert witness to establish causation and thus, requested a ruling on the record. In that ruling, it was determined that Petitioner was not entitled to compensation. *Decision*, dated Dec. 21, 2011.

Even though compensation was denied, a petitioner may be awarded attorneys' fees and costs where her petition was brought in good faith, and who has a reasonable basis for the petition. *See* 42 U.S.C. § 300aa-15(e)(1). Here, counsel for Petitioner spent time gathering medical records and filing affidavits for Petitioner that gave indications of a possible causal connection between the vaccination(s) and injury. Thus, to that point, there was a reasonable basis for proceeding, and Petitioner's counsel acted in good faith in so doing.

Subsequently, because counsel was unable to secure an expert opinion, she determined that could not proceed with the claim and requested a ruling on the record as it stood. By requesting a ruling on the record, counsel for Petitioner ensured that there would be no additional unnecessary costs or expenses incurred. Again, counsel had a reasonable basis for proceeding in this manner and acted in good faith.

Based on the foregoing, Petitioner is eligible for an award of attorneys' fees and costs. Respondent does not contend that Petitioner has not satisfied the requirements for an award of fees and costs.

After reviewing the request, the court finds the stipulated amount of \$22,270.84, 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 Petitioner is awarded attorneys' fees and costs as follows:

in a check made payable jointly to Petitioner (Mary Samsom) and Petitioner's counsel (Ronald C. Homer, of the Conway, Homer & Chin-Caplan, PC firm), in the amount of \$21,270.84.

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.