

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: November 13, 2012

* * * * *	*	
CYDNI MYERS, parent of	*	UNPUBLISHED
JAMES MYERS, a minor,	*	
Petitioner,	*	No. 11-434V
v.	*	Chief Special Master
	*	Campbell-Smith
SECRETARY OF HEALTH	*	Attorneys' Fees and Costs;
AND HUMAN SERVICES,	*	guardianship costs
Respondent.	*	
* * * * *	*	

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for petitioner.
Linda S. Renzi, U.S. Dep't of Justice, Washington, DC, for respondent.

ATTORNEYS' FEES AND COSTS DECISION¹

On July 5, 2011, Cydni Myers (“petitioner”), on behalf of her minor son James, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“Vaccine Program”).² Petitioner alleged that James suffered intussusception as

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends 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). 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

a consequence of receiving a rotavirus vaccination on March 30, 2009, and that he experienced the residual effects of these injuries for more than six months. Petition at 1-3. On June 12, 2012, the then-assigned special master issued a decision awarding compensation based on a stipulation of the parties.

On October 19, 2012, petitioner filed a motion for attorneys' fees and costs. On November 1, 2012, in accordance with General Order #9, petitioner filed a statement stating that she did not incur any costs in pursuing her petition.

On November 1, 2012, the parties filed a Stipulation Regarding Attorneys' Fees and Costs. According to the stipulation, respondent does not object to an award of attorneys' fees in the amount of \$12,179.47. Respondent does, however, object to the \$4,259.25, in fees and costs incurred to obtain petitioner's guardianship in state court.

Section 300aa-15(e)(1) of the Vaccine Act provides that a special master shall award "reasonable attorneys' fees" and "other costs, incurred in any proceeding on such petition." In more recent cases, special masters have interpreted the Vaccine Act's fee provision to include reimbursement for fees and costs incurred in obtaining a guardianship in state court when the establishment of a guardianship is a condition of settlement and incorporated as part of an entitlement decision. See Lindsey ex rel. Lindsey v. Sec'y of Health & Human Servs., No. 08-258V, 2011 WL 6046605, at *2 (Fed. Cl. Spec. Mstr. Nov. 15, 2011) (awarding costs for guardianship when it is a condition of receiving the stipulated award and explaining that special masters have used a "but for" test to analyze reimbursement of costs); Gruber ex rel. Gruber v. Sec'y of Health & Human Servs., No. 00-749V, 2009 WL 2135739, at *11-12 (Fed. Cl. Spec. Mstr. June 24, 2009), vacated on other grounds, 91 Fed. Cl. 773 (2010); Ceballos ex rel. Ceballos v. Sec'y of Health & Human Servs., No. 99-97V, 2004 WL 784910, at *18-23 (Fed. Cl. Spec. Mstr. Mar. 25, 2004) (finding guardianship costs reimbursable generally but not in that case because guardianship was not required by or mentioned in the court's decision).

The undersigned agrees with the more recent decisions issued by special masters finding that when the parties' stipulation requires establishment of a guardianship as a condition of receipt of the damages award, the costs of establishing the guardianship are also compensable under the Vaccine Act. See Dow v. Sec'y of Health & Human Servs., No. 09-801V, 2012 WL 2914818 (Fed. Cl. Spec. Mstr. June 26, 2012); Lilley ex rel. Lilley v. Sec'y of Health & Human Servs., No. 09-31V, 2012 WL 1836323 (Fed. Cl. Spec. Mstr. Apr. 30, 2012); Melnikova ex rel. Yevstigneyev v. Sec'y of Health & Human Servs., No. 09-322V, 2012 WL 1339606 (Fed. Cl. Spec. Mstr. Mar. 27, 2012); Haber ex rel. Haber v. Sec'y of Health & Human Servs., No. 09-458V, 2011 WL 839111 (Fed. Cl. Spec. Mstr. Feb. 14, 2011); Cansler ex rel. Cansler v. Sec'y of Health & Human Servs., No. 09-596V, 2011 WL 597791, at *1-3 (Fed. Cl. Spec. Mstr. Feb. 2, 2011).

Pursuant to the stipulation memorializing the parties' agreement regarding damages, petitioner was required to present evidence of her authority to serve as the guardian or conservator of James's estate as a condition precedent to receiving payment of the damages award. Stipulation at ¶13. In the decision awarding compensation issued on June 12, 2012, the then-assigned special master adopted the parties' stipulation and awarded damages according to the stipulation's terms, including the provision requiring the establishment of a guardianship. Thus, the costs incurred in this case to establish the guardianship in state court fall within a "proceeding" on the petition and are reimbursable under section 300aa-15(e)(1).

Petitioner's costs, including those incurred to obtain a guardianship, must be "reasonable." See Perreira ex rel. Perreira v. Sec'y of Health & Human Servs., 27 Fed. Cl. 29, 34 (1992) ("Not only must any request for reimbursement of attorneys' fees be reasonable, so also must any request for reimbursement of costs."). Here, petitioner incurred \$4,259.47 in fees and costs to obtain a guardianship. The undersigned finds this amount to be reasonable.

The undersigned finds the total requested amount by petitioner for attorneys' fees and costs to be reasonable. Accordingly, an award should be made in the form of a check payable jointly to petitioner and Conway, Homer & Chin-Caplan, P.C., in the amount of **\$16,438.72**. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia Campbell-Smith
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.