

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-0649V

Filed: September 1, 2010

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AMANDA FOSTER

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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PUBLISHED

Meningitis Vaccine; Conversion
Disorder;
Interim Attorneys' Fees and
Costs; Reasonable Amount
Requested to Which Respondent
Does Not Object

INTERIM ATTORNEYS' FEES AND ATTORNEYS' COSTS DECISION¹

CAMPBELL-SMITH, Special Master

On September 15, 2008, Karen Foster on behalf of her daughter, Amanda Foster, filed a claim for compensation pursuant to the National Vaccine Injury Compensation

¹ Because this document contains a reasoned explanation for the action of the undersigned, the document shall post 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, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has fourteen days within which to request the redaction "of any information furnished by that party (1) that is 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." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of timely objection, the entire document will be made publicly available.

Program (Vaccine Program or Program).² 42 U.S.C. §§ 300aa-1 to -34 (2006). Petitioner alleges that her daughter suffered a conversion disorder due to the receipt of the Menactra vaccine on August 11, 2005.³

On November 11, 2009, petitioner filed an Application for Interim Fees and Costs (“Fee App.”). Petitioner seeks interim fees and costs pursuant to 42 U.S.C. § 300aa-15(e) of the National Childhood Vaccine Injury Act of 1986, as amended (the Vaccine Act), and Rule 13 of the United States Court of Federal Claims Vaccine Rules, and further to the guidance provided in Avera v. Secretary of the Department of Health and Human Services, 515 F.3d 1343 (Fed. Cir. 2008). Based on the cited authority, petitioners request interim attorneys’ fees and costs in the amount of \$14,447.08. Fee App., Exhibit 2 at 8.

On November 30, 2009, respondent filed Respondent’s Response and Objections to Petitioners’ Application for Interim Fees and Expenses (R’s Response). On December 14, 2009, petitioners’ filed Petitioners’ Reply to Respondent’s Response and Objections to Petitioners’ Application for Interim Fees and Expenses (Ps’ Reply).

This case was transferred to the undersigned on March 30, 2010.

On July 22, 2010, the undersigned conducted a status conference and encouraged the parties to determine whether it was possible to determine an amount of interim fees to which respondent did not object. July 28, 2010 Order (7/28/10 Order). During the status conference, the parties indicated the possibility of resolving the interim fee request. See 7/28/10 Order. The undersigned scheduled an additional status conference for the parties to report back on their progress in negotiating petitioners’ interim fee request. See id. On August 24, 2010, the parties reported during a status conference that they were able to identify an amount of attorneys’ fees to which respondent would not object to petitioner’s counsel being compensated as an interim amount.

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.A. § 300aa-10 et seq. (2006) (Vaccine Act or the Act). All citations in this Decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

³ Ms. Foster reached the age of majority on May 7, 2010, and petitioner's counsel filed a motion to amend caption in this case, which was granted on May 28, 2010.

On August 31, 2010, petitioner's counsel filed Petitioner's Amended Application for Interim Attorneys' Fees and Costs with Reservations (P's Amended Application) in which petitioner's counsel requested \$13,485.00 in attorneys' fees. Respondent has no objection to an interim award of attorneys' fees in the requested amount of \$13,485.00. In addition, "[p]etitioner's counsel reserves the right to seek all expenses and costs in this case, which will be submitted to the Court for determination at a later time." P's Amended Application at 1.

Based on the reasonableness of petitioner's request, and based on respondent's counsel's lack of objection to petitioners' counsel's amended interim fees request, the undersigned **GRANTS** the motion for payment of interim attorneys' fees and notes that petitioner reserves the right to seek costs and expenses at a future point.

It is the opinion of the undersigned that the circumstances of this case are appropriate for an interim award of petitioner's counsel's fees of \$13,485.00. The undersigned determines that there is no just reason to delay the entry of judgment on an award of interim attorneys' fees and costs. Therefore, in the absence of a motion for review filed under Appendix B of the Rules of the United States Court of Federal Claims, the Clerk of the Court shall enter judgment in petitioners' favor for \$13,485.00 in interim attorneys' fees. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

IT IS SO ORDERED.

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