

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 07-122V
Filed: March 29, 2011
Unpublished

STEVEN SAMPT, as Personal Representative	*	
of the Estate of LOUIS JOSEPH SAMPT, JR.,	*	
	*	
Petitioner,	*	Attorney fees and costs
	*	
v.	*	
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

Anne Carrion Toale, Maglio, Christopher and Toale, Sarasota, F.L., for Petitioner.
Glenn Alexander MacLeod, U.S. Department of Justice, Washington, D.C., for Respondent.

ATTORNEY’S FEES AND COSTS DECISION¹

GOLKIEWICZ, Special Master.

A Decision regarding entitlement to compensation under the Program² was issued on July 26, 2010. Petitioner, as personal representative of the Estate of Louis Sampt, Jr., alleged that Louis Sampt, Jr., suffered an autoimmune reaction and demyelinating polyneuropathy as a consequence of an influenza vaccine and died as a consequence. Decision, filed July 26, 2010. The Petition in this matter was originally filed by the decedent, whose death occurred during the pendency of this action. Petition, filed February 21, 2007; Joint Status Report, filed September 30, 2009. On December 17, 2011, petitioner filed an Application for Attorneys’ Fees and Costs. P Application for Attorneys’ Fees and Costs, filed December 17, 2011 [hereinafter “Fee

¹ The undersigned intends to post this decision on the website for 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 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. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.**

² This Program comprises 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-10 et seq. (West 1991 & Supp. 2002) (hereinafter “Program,” “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. §§ 300aa of the Act.

Application” or “Fee App.”]. The Fee Application states that petitioner “incurred attorneys’ fees and costs in this case represented . . . in the amount of \$46,265.00 in fees and \$17,744.11 in costs for a total of \$64,009.11.” Fee App. ¶ 2. Further, “[p]etitioner has incurred personal costs in this case in the amount of \$4,442.80.” *Id.* at ¶4. The Fee Application was filed with additional documentation.

On January 19, 2011, respondent filed her Response to Petitioner’s Application for Attorneys’ Fees and Costs. R Response to Petitioner’s Application for Attorneys’ Fees and Costs, filed January 19, 2011 [hereinafter “Response” or “R Resp.”]. Respondent first states that objections to petitioner’s request for attorneys’ fees and costs were discussed. R Resp., p. 1-2. Based upon these discussions, petitioner now seeks \$62,000.00 in attorneys’ fees and costs. *Id.*; P Reply to Fee Opposition, filed January 21, 2011 [hereinafter “P Reply”]. Respondent does not object to compensation in the amount of \$62,000.00 in attorneys’ fees and costs. *Id.* at 2. Therefore, petitioner is awarded \$62,000.00 in attorneys’ fees and attorney costs.

Respondent does, however, object to the \$4,442.80 in costs that petitioner incurred out-of-pocket associated with the establishment of the Estate of Louis Joseph Sampt, Jr. R Resp., p. 2. Respondent objects on the basis that these costs were not incurred in proceeding on the vaccine petition. Petitioner is in disagreement, arguing that respondent construes the Act too narrowly and that establishment of the estate was required by the terms of the settlement. P Reply, p. 1-3 (citing 42 U.S.C. § 300aa-15(e)(1); Burgess v. Sec’y of the Dept. of Health & Human Servs., No. 07-258V, slip op. (Fed. Cl. Spec. Mstr. Jan. 3, 2011); Gruber v. Sec’y of the Dept. of Health & Human Servs., No. 00-749V, 2009 WL 2135739 (Fed. Cl. Spec. Mstr. Jun. 24, 2009), vacated on other grounds, 91 Fed. Cl. 773 (Fed. Cl. 2010)). Referencing the parties’ Stipulation specifically, petitioner notes that he was required to be, or become within ninety days, the representative of Louis Sampt’s Estate and provide documentation of this in order to receive the awarded compensation. P Reply, p. 2-3 (citing Stipulation, ¶ 12, filed July 23, 2010).

As discussed in Ceballos, a “but for” test is employed when finding certain expenses, such as probate or guardianship expenses, reimbursable. Ceballos v. Sec’y of the Dept. of Health & Human Servs., No. 99-97V, 2004 WL 784910 (Fed. Cl. Spec. Mstr. Mar. 25, 2004)(finding guardianship expenses unreimbursable in the set of facts specific to the case but discussing situations wherein reimbursement of such expenses may be awarded). While there is contrary authority from past years, *see, e.g., Mol v. Sec’y of the Dept. of Health & Human Servs.*, 50 Fed. Cl. 588 (Fed. Cl. 2001)(finding only work done “during the pendency of a petition before a special master” or the court is compensable and “state court proceedings were not part of the prosecution of the vaccine petition”), the special masters have universally awarded expenses incurred as required by respondent for receipt of payment. *See, e.g., Haber v. Sec’y of the Dept. of Health & Human Servs.*, No. 09-458V, 2011 WL 839111 (Fed. Cl. Spec. Mstr. Feb. 14, 2011)(awarding expenses for establishment of a guardianship when it was required by respondent for the payment of a Vaccine award); Cansler v. Sec’y of the Dept. of Health & Human Servs., No 09-596V, 2011 WL 597791 (Fed. Cl. Spec. Mstr. Feb. 2, 2011)(awarding expenses for establishment of a guardianship trust when it was required by respondent for the payment of a Vaccine award).

In the instant case, petitioner was required to be the personal representative of Louis Sampt’s Estate to become petitioner when Louis Sampt passed away; further, he was required to

be personal representative of the Estate in order to receive the compensation stipulated and awarded for the vaccine-related injury and death. Therefore, the undersigned finds the probate proceedings in this case are compensable and awards petitioner 4,442.80 in petitioner's own costs.

The court hereby awards the petitioner attorneys' fees and costs in the amount of \$62,000.00 and petitioner's costs in the amount of \$4,442.80. **Specifically, petitioner is awarded a lump sum of \$62,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney; petitioner is also awarded a lump sum of \$4,442.80 in the form of a check payable to petitioner individually.**

The Clerk of the Court is directed to enter judgment accordingly.³

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master

³Pursuant 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. Furthermore, this amount is intended to cover all legal expenses. 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.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of the Dept. of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).