

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-31V

Filed: April 30, 2012

For Publication

CYNTHIA LILLEY, Parent of
ROBERT LILLEY, a minor,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Attorneys' Fees & Costs Decision;
Reasonable Hours Expended; Travel
Time; Reasonable Guardianship
Costs; Block Billing

Ronald C. Homer, Boston, MA, for petitioner.
Ann D. Martin, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

On January 15, 2009, petitioner, on behalf of her son Robert, filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10 to -34, alleging that hepatitis B vaccine caused her son's transverse myelitis. The undersigned issued a Ruling on Entitlement on September 28, 2009, finding that petitioner prevailed and is entitled to compensation. The parties resolved the damages phase of the case after submitting life care plans, developing evidence on home modifications, and participating in mediation proceedings before Special

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

Master Vowell to discuss appropriate home modifications. Respondent filed a Proffer on November 18, 2011, which petitioner accepted. The undersigned then issued a Decision Awarding Damages based on the Proffer on November 21, 2011.

On February 14, 2012, petitioner filed an Application for Attorneys' Fees and Costs ("Fee App."), requesting \$68,723.00 in attorneys' fees, \$75,650.31 in attorneys' costs, and \$341.55 in petitioner's costs. On March 2, 2012, respondent filed a Response ("Resp."), objecting to the number of professional hours expended on certain tasks, the request for full compensation for travel time, the request for reimbursement of costs incurred to establish a guardianship, and miscellaneous costs. On March 19, 2012, petitioner filed a Reply to the Respondent's Response to Petitioner's Application for Attorneys' Fees and Costs ("Reply") as well as a Supplemental Application for Final Attorneys' Fees. In the supplemental fee application, petitioner requests \$2,167.30 for drafting the Reply.

Petitioner's motion for attorneys' fees is now ripe for decision.

I. Legal Standard for Attorneys' Fees and Costs

The Vaccine Act permits an award of "reasonable attorneys' fees" and "other costs." 42 U.S.C. § 300aa-15(e)(1). A petitioner need not prevail on entitlement to receive a fee award as long as petitioner brought the claim in "good faith" and with a "reasonable basis" to proceed. *Id.* When a petitioner prevails, as petitioner did in the instant case, the special master must assess whether the fees and costs requested by petitioner are "reasonable." The special master has "wide discretion in determining the reasonableness" of attorneys' fees and costs. *See* Perreira v. Sec'y of HHS, 27 Fed. Cl. 29, 34 (1992), *aff'd*, 33 F.3d 1375 (Fed. Cir. 1994); *see also* Saxton ex rel. Saxton v. Sec'y of HHS, 3 F.3d 1517, 1519 (Fed. Cir. 1993) ("Vaccine program special masters are also entitled to use their prior experience in reviewing fee applications").

The Federal Circuit has approved the lodestar approach to determine "reasonable attorneys' fees" and costs under the Act. Avera v. Sec'y of HHS, 515 F.3d 1343, 1347 (Fed. Cir. 2008). The lodestar approach involves a two-step process. First, a court determines an "initial estimate . . . by 'multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.'" *Id.* at 1347-48 (quoting Blum v. Stenson, 465 U.S. 886, 888 (1984)). Second, the court may make an upward or downward departure from the initial calculation of the fee award based on specific findings. *Id.* at 1348.

II. Analysis

A. Hourly Rates

A reasonable hourly rate is "the prevailing market rate defined as the rate prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Id.* (citation and quotation omitted). In Avera, the Federal Circuit found that in Vaccine Act cases, a court should use the forum rate, i.e., the DC rate, in determining an award of attorneys' fees. *Id.* at 1349. At the same time, the court adopted the Davis County exception to prevent windfalls to attorneys who work in less expensive legal markets. *Id.* (citing Davis

County Solid Waste Mgmt. & Energy Recovery Spec. Serv. Dist. v. U.S. Env'tl. Prot. Agency, 169 F.3d 755 (D.C. Cir. 1999)). In cases where the bulk of the work is completed outside the District of Columbia, and there is a “very significant difference” between the forum hourly rate and the local hourly rate, the court should calculate an award based on local hourly rates. Id. (finding the market rate in Washington, DC to be significantly higher than the market rate in Cheyenne, Wyoming).

Respondent does not object to the hourly rates requested by petitioner’s counsel. See Resp. 4. The undersigned reviewed the fee application and finds the hourly rates requested to be reasonable and consistent with the rates at which these attorneys and staff have been compensated in past cases. See Calise v. Sec’y of HHS, No. 08–865V, 2011 WL 2444810, at *6 (Fed. Cl. Spec. Mstr. June 13, 2011); Soto v. Sec’y of HHS, No. 09–897V, 2011 WL 2269423, at *5 (Fed. Cl. Spec. Mstr. June 7, 2011).

B. Hours Expended

The lodestar approach requires that the reasonable hourly rate be multiplied by the number of hours “reasonably expended on the litigation.” Avera, 515 F.3d at 1347–48 (quotation and citation omitted). Counsel must submit fee requests that include contemporaneous and specific billing entries, indicating the task performed, the number of hours expended on the task, and who performed the task. See Savin ex rel. Savin v. Sec’y of HHS, 85 Fed. Cl. 313, 315–18 (2008). Counsel must not include in their fee request hours that are “excessive, redundant, or otherwise unnecessary.” Saxton, 3 F.3d at 1521 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)). It is “well within the special master’s discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done.” Id. Furthermore, the special master may reduce hours sua sponte, apart from objections raised by respondent and without providing petitioner notice and opportunity to respond. See Sabella v. Sec’y of HHS, 86 Fed. Cl. 201, 208–09 (2009); see also Savin, 85 Fed. Cl. at 315–19 (quoting Duncan v Sec’y of HHS, No. 99–455V, 2008 WL 4743493, at *1 (Fed. Cl. 2008)) (explaining that “the Special Master has an independent responsibility to satisfy himself that the fee award is appropriate and not limited to endorsing or rejecting respondent's critique”).

Respondent objects to the number of hours expended by petitioner’s counsel on preparing the initial filings as well as the hours requested for the time counsel spent traveling. See Resp. 4–7. The undersigned addresses respondent’s objections below.

1. Petitioner’s Initial Filings

Respondent contends that the number of hours billed for the drafting of petitioner’s affidavit, the petition, and a motion for ruling on the record filed with the petition is excessive. Resp. 4–5. In her reply, petitioner argues that the number of hours expended is reasonable based on the need to review over 1,200 pages of medical records prior to filing and that most of the work was performed by a law clerk or paralegal at a much lower hourly rate. Reply 2–4.

Based on the billing records, counsel spent approximately 14.5 hours² drafting, editing,

² The following entries by a law clerk, Mr. Kevin Conway, and Ms. Amy Fashano were included in this

and reviewing petitioner's affidavit, 40 hours drafting the petition,³ and 25 hours⁴ researching, drafting, and editing a motion for ruling on the record. Fee App., Tab A, at 7–10. These hours are in addition to the 33.8 hours⁵ billed by a law clerk organizing and summarizing the extensive medical records. Petitioner ultimately filed a 25-page Petition for Vaccine Compensation and Motion for A Ruling on the Record on January 15, 2009, citing to pertinent facts from Robert's medical records and arguing for a ruling in petitioner's favor.

Given that a paralegal spent nearly 34 hours organizing and summarizing the medical records, billing an additional 65 hours for drafting and editing the petition and motion for ruling on the record is excessive. A law clerk billed 31.5 hours⁶ simply drafting the petition before any supervising attorney reviewed and edited it. Moreover, the undersigned agrees with respondent, see Resp. 4 n.1, that preparing a motion for ruling on the record to be filed with the petition is unreasonable. For drafting and researching the motion, the law clerk billed 11.2 hours.⁷ Petitioner's counsel may have thought that petitioner had a winning case after investigating the claim. At that point in the litigation, however, petitioner had not produced an expert report, respondent had not stated her position, either informally in a status conference or formally in a Rule 4(c) Report, and the undersigned had not offered her assessment of the case. The motion was premature and the hours expended preparing it unreasonable.

Accordingly, the undersigned finds 20 hours to be a reasonable number of hours for drafting the petition and reduces the award by 11.5 hours, measured by the law clerk's hourly rate, or **\$1,495.00**. In addition, the undersigned reduces the award by 11.2 hours measured by the law clerk's hourly rate, or **\$1,456.00**, for the hours unreasonably expended preparing the motion for ruling on the record.

sum: 4.8 hours (6/17/08); 3.5 hours (6/18/08); 0.5 hours (6/18/08); 0.5 hours (6/19/08); 0.1 hours (6/30/08); 0.2 hours (6/30/08); 0.7 hours (7/22/08); 1.7 hours (7/27/08); 0.5 hours (7/31/08); 0.3 hours (7/31/08); 0.1 hours (8/1/08); 0.1 hours (8/1/08); 1.4 hours (8/5/08); and 0.1 hours (8/18/08).

³ The following entries by a law clerk were used to calculate this sum: 3.0 hours (6/18/08); 5.0 hours (6/19/08); 6.0 hours (6/23/08); .03 hours (6/24/08); 6.0 hours (7/30/08); 6.0 hours (7/31/08); 2.5 hours (8/13/08); 7.0 hours (8/14/08); and 1.5 hours (8/15/08).

⁴ The following entries by a law clerk, Mr. Conway, and Ms. Fashano were used to calculate this sum: 1.5 hours (8/15/08); 1.5 hours (8/19/08); 1.9 hours (8/21/08); 0.2 hours (8/21/08); 0.2 hours (8/21/08); 1.5 hours (8/22/08); 2.8 hours (12/10/08); 5.0 hours (12/15/08); 3.8 hours (12/29/08); 1.0 hour (12/29/08); 5.0 hours (12/30/08); and 0.6 hours (12/31/08).

⁵ The following entries by a paralegal were used to calculate this sum: 3.6 hours (8/1/07); 1.5 hours (8/2/07); 7.0 hours (3/3/08); 5.0 hours (3/4/08); 6.0 hours (3/5/08); 6.5 hours (3/6/08); 0.2 hours (3/6/08); 1.0 hour (5/22/08); and 3.0 hours (6/5/08).

⁶ See Fee App, Tab A, at 8–9 (3.0 hours on 6/18/08, 5.0 hours on 6/19/08, 6.0 hours on 6/23/08, 3.0 hours on 6/24/08, 6.0 hours on 7/30/08, 6.0 hours, on 7/31/08, and 2.5 hours on 8/13/08).

⁷ See Fee App, Tab A, at 10 (1.9 hours on 8/21/08, 1.5 hours on 8/22/08, 2.8 hours on 12/10/08, and 5.0 hours on 12/15/08).

As for the work on the affidavit, the law clerk, Ms. Fashano, and Mr. Conway billed approximately 14.5 hours for reviewing the case, drafting the affidavit, and editing the document. The undersigned finds some of the billing entries associated with the preparation of the affidavit to be unreasonable. For instance, the law clerk and Ms. Fashano each billed 0.1 hours for a case meeting to discuss the edits to the affidavit. This is in addition to the 0.5 hours Ms. Fashano and 0.3 hours the law clerk billed editing the document the day before. It is redundant to bill for editing the document and then bill for discussing the same edits in a case meeting. The undersigned reduces the award by **\$33.00** for these entries. Ms. Fashano also billed 1.4 hours on August 5, 2008 for editing the affidavit. This is in addition to the 0.7 hours Mr. Conway spent editing the document on July 22, 0.5 hours Ms. Fashano spent on July 31, and 0.5 hours the law clerk spent on July 31. It is unclear how much more editing was necessary for a six-page document. The undersigned will reimburse counsel for half of this billing entry, reducing the award by **\$140.00**.

2. Travel Time

Respondent objects to Mr. Homer and Mr. Pepper billing at their full rates for time spent traveling to a site visit and mediation. Resp. 5–7. Respondent emphasizes that neither Mr. Homer nor Mr. Pepper presented sufficient documentation to indicate that they worked during the hours they spent traveling. Resp. 6–7. Petitioner replies that “it would not be unreasonable” for counsel to work while traveling to the destinations, that the damages phase of the case was complex, and that “preparation in the hours leading up to the onsite visit and the mediation was essential.” Reply 4.

The Vaccine Program traditionally compensated attorneys for travel time at 50 percent of their hourly rate. See Gruber ex rel. Gruber v. Sec’y of HHS, 91 Fed. Cl. 773, 778 (Fed. Cl. 2010) (citation and quotation omitted). The Court of Federal Claims called this practice into question in Gruber, which cautioned against the use of an automatic rule when the Act requires special masters to review fee applications based on the flexible standard of reasonableness. Id. at 791. The court contemplated that a special master could award full compensation for an attorney’s travel time if presented with sufficient documentation. Id. On the other hand, the court indicated that “even an automatic 50% award may be too high for an undocumented claim, given the possibility that an attorney may use the travel time to work on another matter or not to work at all while traveling.” Id. Ultimately, the court instructed that “each case should be assessed on its own merits.” Id. (citation and quotation omitted).

In this case, petitioner’s counsel billed 6.5 hours for traveling to a site visit in Nashville, Tennessee on April 30, 2009, and 4.5 hours at half of his hourly rate for traveling back to Boston, Massachusetts on May 4, 2009. Respondent objects only to the travel time on April 30, arguing that the travel hours should be compensated at 50 percent of Mr. Homer’s hourly rate. Resp. 6. While petitioner is correct that counsel may be compensated for work performed while traveling, the court in Gruber made clear that counsel must present sufficient documentation. See 91 Fed. Cl. at 791. Here, petitioner’s documentation merely consists of a billing entry for these hours and a cryptic statement in the reply that preparation was “essential,” rather than an assertion that petitioner’s counsel actually prepped for the site visit while traveling.⁸ Petitioner

⁸ Petitioner’s counsel did bill for 1.8 hours spent in preparation for the site visit on April 28, 2009. See

has not presented sufficient documentation to warrant full compensation for the hours counsel spent traveling to the site visit. Accordingly, the undersigned will reimburse petitioner for 50 percent of the 6.5 hours petitioner's counsel billed traveling to Nashville, reducing the award by **\$942.50**.

Respondent also objects to the full four hours of travel time to Washington, DC, to attend the mediation before Special Master Vowell. Resp. 7. Respondent points out that Mr. Pepper otherwise billed 16.5 hours to prepare for the mediation between January 31, 2011 and February 8, 2011. Resp. 7. Petitioner offers no documentation to substantiate any work performed during counsel's travel time other than the billing entry and the statement that the damages phase was complex and preparation was essential. See Reply 4. Because of the lack of documentation and the additional hours Mr. Pepper billed for preparation, the undersigned will reimburse petitioner for 50 percent of the four hours petitioner's counsel billed traveling to Washington, reducing the award by **\$400.00**.

3. Other Billing Entries

The undersigned has concerns with some additional entries. In the undersigned's experience with petitioner's counsel's firm, the firm routinely assigns numerous attorneys and paralegals to work on a case. For example, in the case at hand, four associates, three partners, a law clerk, and a paralegal billed for their time. This practice inevitably leads to duplicative billing entries as each attorney bills for the time it takes to become familiar with the case. These hours are "excessive, redundant, or otherwise unnecessary." See Saxton, 3 F.3d at 1521 (quoting Hensley, 461 U.S. at 434).

For instance, on February 11, 2010, Mr. Pepper and Mr. Homer had a case meeting, each billing 0.4 hours, to discuss the status of settlement, the life care plan, and other matters to bring Mr. Pepper "up to speed." See Fee App., Tab A, at 18. These hours are duplicative. The undersigned reduces the award by **\$80.00**, measured by Mr. Pepper's billing entry.

On February 18, 2010, Mr. Pepper and Mr. Homer had a case meeting, each billing 0.3 hours, to discuss the case status. These entries are duplicative, and the undersigned reduces the award by **\$60.00**, measured by Mr. Pepper's billing entry.

On February 20, 2010, Mr. Pepper and Mr. Homer each billed 0.2 hours for another case meeting. Once again, these entries are duplicative, and the undersigned reduces the award by **\$40.00**, measured by Mr. Pepper's billing entry.

The remaining hours appear to be reasonable, and the undersigned will reimburse petitioner's counsel for this time.

Fee App., Tab A, at 11. It is unclear why petitioner's counsel did not include a similar entry on April 30, 2009 if he, in fact, worked hours in preparation for the site visit while traveling, or at least include a more detailed entry listing the tasks performed while traveling. This inconsistency undermines petitioner's argument that petitioner's counsel merits full compensation for his travel time.

C. Petitioner's Costs

1. Guardianship Costs

Respondent objects to the \$16,468.75 in costs petitioner incurred to establish a guardianship and use of trust. Resp. 7. Respondent argues that costs associated with guardianship proceedings in state court “are not part of the prosecution of the vaccine petition,” and so are not compensable under the Act.” Resp. 7–8 (quoting Mol v. Sec’y of HHS, 50 Fed. Cl. 588, 591 (2001)). Respondent acknowledges that decisions from the Court of Federal Claims are not binding on special masters, except in the same case, and that some special masters have reached the opposite conclusion. Resp. 8 (citing Ceballos ex rel. Ceballos v. Sec’y of HHS, No. 99–97V, 2004 WL 784910 (Fed. Cl. Spec. Mstr. Mar. 25, 2004)). Maintaining her position that guardianship costs are not compensable under the Act, respondent argues that if the special master does award guardianship costs in this case, the amount requested by petitioner is unreasonable. Resp. 9–10.

Section 300aa–15(e)(1) 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 costs incurred obtaining a guardianship in state court when establishment of a guardianship is a condition of settlement and incorporated as part of a damages decision. See Lindsey ex rel. Lindsey v. Sec’y of HHS, 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 HHS, No. 00–749V, 2009 WL 2135739 (Fed. Cl. Spec. Mstr. June 24, 2009), *vacated on other grounds*, 91 Fed. Cl. 773 (2010); Ceballos, 2004 WL 784910, at *18–23 (finding guardianship costs reimbursable generally but not in that case because a guardianship was not required by or mentioned in the court’s decision).

The undersigned agrees with the more recent decisions issued by special masters on the matter of guardianship: when the parties’ agreement on damages requires establishment of a guardianship in state court as a condition of receipt of the damages award, the costs of establishing the guardianship are compensable under the Vaccine Act. See also Melnikova ex rel. Yevstigneyev v. Sec’y of HHS, No. 09–322V, 2012 WL 1339606 (Fed. Cl. Spec. Mstr. Mar. 27, 2012); Cansler ex rel. Cansler v. Sec’y of HHS, No. 09–596V, 2011 WL 597791, at *1–3 (Fed. Cl. Spec. Mstr. Feb. 2, 2011) (explaining that respondent required the establishment of a guardianship in the stipulation, the court then adopted the provision of the stipulation in the damages award, and the issuance of the award placed the issue of guardianship within the purview of a proceeding on a vaccine petition).

As a condition included in Respondent’s Proffer on Award of Compensation, filed on November 18, 2011, petitioner was required to provide documentation that she had been appointed as guardian or conservator of Robert Lilley’s estate to receive payment. Proffer ¶ D.3. In the Decision Awarding Damages issued on November 21, 2011, the undersigned stated that petitioner accepted respondent’s Proffer and awarded damages according to the Proffer’s terms, incorporating the provision requiring the establishment of a guardianship. Thus, the reasonable

costs incurred to establish the guardianship in this case are within a “proceeding” on the petition and reimbursable under section 300aa–15(e)(1).

Petitioner’s costs, including costs incurred to obtain a guardianship, must be “reasonable.” See Perreira, 27 Fed. Cl. at 34 (“The conjunction ‘and’ conjoins both ‘attorneys’ fees’ and ‘other costs’ and the word ‘reasonable’ necessarily modifies both. Not only must any request for reimbursement of attorneys’ fees be reasonable, so also must any request for reimbursement of costs.”). Petitioner requests reimbursement for \$16,468.75 in costs for work performed by petitioner’s guardianship attorney. See Fee App., Tab A, at 39 & Tab B, at 66–75.

A review of other recent decisions awarding guardianship costs as part of a fee award shows that petitioner’s guardianship costs are significantly more than the amounts awarded in past cases. See, e.g., Sucher ex rel. Sucher v. Sec’y of HHS, No. 07–0058V, 2012 WL 1030028 (Fed. Cl. Spec. Mstr. Mar. 2, 2012) (ruling that the \$11,788.00 cost to comply with the surety bond requirement for establishing a conservatorship is reimbursable); Finet ex rel. Finet v. Sec’y of HHS, No. 03–348V, 2011 WL 597792, at *3 (Fed. Cl. Spec. Mstr. Jan. 31, 2011) (awarding \$7,440.00 for guardianship costs). See also Amar ex rel. Amar v. Sec’y of HHS, No. 06–221V, 2011 WL 6077558, at *24 (Fed. Cl. Spec. Mstr. Nov. 10, 2011) (awarding \$3,520.50 for guardianship costs); Robidoux ex rel. Robidoux v. Sec’y of HHS, No. 07–576V, 2009 WL 4034799, at *1 (Fed. Cl. Spec. Mstr. Oct. 23, 2009) (awarding \$4,920.51 for guardianship costs).

Petitioner does not offer much explanation for the unusually high guardianship costs, only arguing that the cost of establishing a guardianship in another state is not relevant to the cost of establishing a guardianship in Tennessee, where petitioner resides. See Reply 6. Petitioner states that “respondent . . . fails to discuss whether the applicable laws and requirements with respect to guardianship in these other cases are analogous to the laws and requirements in the instant case.” Id. Petitioner, however, has the burden to show the reasonableness of her request for reimbursement of costs, and petitioner has not demonstrated why the requirements of Tennessee state law justify the costs incurred. See Sabella, 86 Fed. Cl. at 211, 215 (“The burden is on petitioner to explain why the attorneys’ fees claimed are reasonable.”) (citation omitted).

Furthermore, it is evident from the billing records of the Nashville firm⁹ employed by petitioner to handle the guardianship petition that the law firm was not familiar with the relevant Tennessee statutes.¹⁰ Multiple billing entries include a review of “statutes,” “issues,” and “requirements.” See, e.g., Fee App, Tab B, at 66 (“review issues re: requirements to file an inventory and accounting”); id. at 69 (“Research TN law re: guardianship proceedings for minor settlements”); id. (“review statute re: various matters; including compensation of fiduciaries and related issues”); id. at 70 (“Review TN statutes re: waiver of bond and trustee obligations”). Petitioner’s guardianship attorneys may not bill for educating themselves on the relevant

⁹ Petitioner retained a Nashville law firm to represent her in the state court proceedings. See Fee App, Tab B, at 66–75) . The letters of guardianship were filed with this court on December 13, 2011. ECF No. 71.

¹⁰ The relevant Tennessee statute is located at Tenn. Code § 34-1-101 to -131 (2010).

statutory law. They would not be able to bill a private client for learning the area of law relevant to the client's case, and they are similarly not entitled to reimbursement from the Vaccine Program. See Hensley, 461 U.S. at 434 (“Hours that are not properly billed to one’s *client* also are not properly billed to one’s *adversary* pursuant to statutory authority.”) (citation omitted).

Further demonstrating the firm’s inexperience with guardianship matters, the law firm billed hours for redrafting the petition and property management plan after deciding to use a corporate surety to meet the bond requirement¹¹ and waive the annual accounting.¹² The attorneys began drafting a petition on October 25, 2011, researched how to waive the bond requirement on October 31, 2011, confirmed the use of Cumberland Trust Company as a corporate surety between November 8 and November 15, 2011, and thereafter revised extensively the petition and property management plan. See Fee App, Tab B, at 69–74. At least some of these hours are redundant given that counsel changed their strategy after learning more about the guardianship statutes.

The undersigned cannot determine how many hours were unreasonably expended by the attorneys at the Nashville law firm because the attorneys’ “block-billed,” grouping multiple tasks in a single line entry. This method of maintaining billing records frustrates the ability of the undersigned to review how many hours were spent on a given task and determine the reasonableness of the hours expended. As the special masters have noted, “‘block billing’ is not preferred” in the Vaccine Program. See Broekelschen v. Sec’y of HHS, No. 07–137V, 2008 WL 5456319, at *4–5 (Fed. Cl. Spec. Mstr. Dec. 17, 2008); see also Carcamo v. Sec’y of HHS, No. 07–483V, 2011 WL 2413345, at *6–8 (Fed. Cl. Spec. Mstr. May 20, 2011).

Petitioner has not shown that a request for \$16,468.75 in guardianship costs is reasonable, even after given the opportunity to file a reply to respondent’s objections. Moreover, it is clear from the billing records that some hours expended by petitioner’s guardianship attorneys were unreasonable. The attorneys’ use of block billing, however, prevents the undersigned from evaluating the exact number of hours that were unreasonably expended. Accordingly, the undersigned uses her discretion and awards **\$8,500.00** for guardianship costs. This is a reasonable amount based on petitioner’s need to use a corporate surety, execute a trust agreement with the financial institution acting as a corporate trustee, and draft a property management plan under Tennessee Law. The amount is also within range of guardianship costs awarded in past decisions.

2. Miscellaneous Costs

Petitioner requests reimbursement for \$240.00¹³ in meal costs for Mr. Homer and the life

¹¹ See Tenn. Code § 34-1-105(a)(1) (requiring bond of fiduciaries in an amount equal to the sum of the fair market value of the anticipated income from the property for one year unless an exception applies).

¹² See Tenn. Code § 34-1-111.

¹³ Mr. Homer and Ms. Clancy, the life care planner, actually spent \$174.26 on April 30, 2009 and \$142.53 on May 1, 2009, Fee App, Tab B, at 16, but only requested reimbursement for \$120.00 for each meal. These receipts were not itemized.

care planner during the site visit on April 30, 2009 and May 1, 2009. Fee App., Tab A, at 37. Respondent objects to the meal costs as excessive. The undersigned considers \$60.00 per person for dinner to be high, but reasonable and will reimburse petitioner for these costs.

III. Conclusion

Using the requested hourly rates and incorporating the reductions above, the undersigned awards:

- a. **\$133,925.36**, representing reimbursement for \$66,243.80 in attorneys' fees and \$67,681.56 in attorneys' costs. The award shall be in the form of a check payable to petitioner and Conway, Homer & Chin-Caplan, PC.
- b. **\$341.55**, representing reimbursement for petitioner's costs.¹⁴ The award shall be in the form of a check payable to petitioner.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.¹⁵

IT IS SO ORDERED.

Dated: April 30, 2012

/s/ Laura D. Millman
Laura D. Millman
Special Master

¹⁴ Petitioner filed a General Order #9 Statement on February 14, 2012, ECF No. 72, stating that petitioner incurred \$341.55 in out-of-pocket litigation costs to pursue the petition.

¹⁵ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.