

OFFICE OF SPECIAL MASTERS

No. 90-2230V

(Filed: June 30, 1998)

KASEY TURK,

*

Petitioner,

*

* PUBLISH

*

v.

*

*

SECRETARY OF HEALTH AND
HUMAN SERVICES,

*

*

*

Respondent.

*

*

DECISION ON ATTORNEYS' FEES AND COSTS

Petitioner, Kasey Turk (Ms. Turk), seeks an award of attorneys' fees and costs for an action that she pursued under the National Vaccine Injury Compensation Program (Program).⁽¹⁾ Ms. Turk's attorneys claim \$30,750.33 in fees and \$7,147.49 in costs. Petitioner's Application for Fees and Costs (Fee Petition), filed June 2, 1998, Exhibit A at 25-26. In compliance with General Order No. 9, Ms. Turk represents that she did not incur any costs during proceedings on the petition and that she did not pay a retainer to her counsel. Fee Petition, Exhibit C. Respondent did not object either formally or informally to the Fee Petition. See RCFC Appendix J, Vaccine Rule 8(f).

The Act limits compensation for attorneys' fees and costs in this case to \$30,000.00. § 300aa-15(b). The special master has reviewed thoroughly Ms. Turk's Fee Petition. The

special master decides that the Fee Petition merits certain deductions.⁽²⁾ Nevertheless, the special master determines that Ms. Turk's Fee Petition exceeds \$30,000.00, even after the special master applies appropriate deductions. Therefore, the special master rules that the statutory maximum award of \$30,000.00 for attorneys' fees and costs is proper in this case.

In the absence of a motion for review filed under RCFC Appendix J, the clerk of court shall enter judgment in Ms. Turk's favor for \$30,000.00 in attorneys' fees and costs. As required by *Heston v. Secretary of HHS*, No. 90-3318V (Fed. Cl. May 26, 1998), and *Newby v. Secretary of HHS*, No. 90-2250V (Fed. Cl. June 26, 1998), the judgment must reflect that the check shall be payable *solely* to Ms. Turk.⁽³⁾

John F. Edwards

Special Master

1. ¹ The statutory provisions governing the Vaccine Program are found in 42 U.S.C.A. §§ 300aa-1 *et. seq.* (West Supp. 1998). For convenience, further reference will be to the relevant section of 42 U.S.C.A.

2. ² For example, the special master reduces the hourly rate for Ronald C. Homer, Esq., to \$165.00; for Kevin Conway, Esq., to \$175.00; for Kim Larkin, Esq., to \$125.00; and for David E. Lewis, Esq., to \$125.00.

3. ³ The special master cannot discern that the plain language of § 300aa-15 confers upon the special master, *or upon respondent*, any discretion to authorize joint payment of compensation for attorneys' fees and costs to petitioner and to petitioner's counsel, even though joint payment of an award may be customary in traditional civil fora. *See Heston*, No. 90-3318V, slip op. at 2. Indeed, it appears that respondent argued in *Newby* that the statute mandates payment of compensation *directly* to petitioners. *See Newby*, No. 90-2250V, slip op. at 3.