

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-720V

Filed: April 4, 2012

Not to be Published

**BEVERLY PINA, Parent of DERYL PINA,
a minor,**

Petitioner,

v.

**SECRETARY OF HEALTH AND HUMAN
SERVICES**

Respondent.

Autism; Attorneys' Fees and Costs
Denied; Good Faith and Reasonable
Basis

DECISION DENYING ATTORNEYS' FEES AND COSTS¹

On October 25, 2011, petitioner's counsel filed a motion for an award of attorneys' fees and costs. On November 22, 2011 respondent filed an objection in response to petitioner's motion for attorneys' fees and costs alleging that there is insufficient evidence in the record to support an award of attorneys' fees and costs.

On November 28, 2011, I indicated I agreed with respondent's position and ordered petitioner's counsel to file sufficient evidence to demonstrate that the claim was brought in good faith and upon a reasonable basis. See 42 U.S.C. § 300aa-15(e)(1). On December 23, 2011, petitioner's counsel filed a motion for an extension of time until January 22, 2012 to file this information. Petitioner's motion was granted on December 28, 2011. Petitioner's counsel failed to file any evidence or any response at all to my

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

December 28, 2011 Order.²

A determination of whether a fee award is appropriate, in a Vaccine Program claim where petitioner does not prevail, must begin with an assessment of whether the case was brought in good faith and with a reasonable basis, as required by the Act. See 42 U.S.C. § 300aa-15(e)(1). I cannot make such a determination in the instant claim since no evidence has been offered in support of these factors. Accordingly, **petitioner's motion for attorneys' fees and costs is denied.**

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.³

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Special Master

² It is noted that petitioner was first ordered to file medical records in this case, as required under the Vaccine Act, on February 13, 2009. Petitioner failed to file any of the required records, other than an unidentified vaccination record, and this case was dismissed on March 29, 2011 for insufficient proof and failure to prosecute.

³ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).