

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 00-770V
Filed: July 31, 2009**

JOENESHA MILLER, *
*
 Petitioner, *
*
 v. *
*
SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *
*
 Respondent. *
*

ATTORNEY FEES AND COSTS DECISION

Vowell, Special Master:

On July 24, 2009, petitioner filed an [150] unopposed application for attorney fees and costs. On July 30, 2009, a status conference was held regarding the attorney fees and costs application.¹ On July 31, 2009, petitioner filed a [152] motion to amend the application for attorney fees and costs which is hereby **GRANTED**. Respondent raised no objections to the amended application. It is that amended application upon which the award of fees and costs is based.

Petitioner requests a total of **\$178,422.66**. The requested amount represents no costs for litigation costs personally incurred by petitioner, **\$59,870.00** for attorney fees and **\$7,117.92** in costs incurred by petitioner’s previous counsel, Angelo Marino, and

¹ The status conference was called specifically to discuss the 58 hours billed by Dr. Classen for his work on the case. Given the circumstances of the case, the court found awarding compensation for 58 hours to a physician who is not a specialist in rheumatic disease entirely unreasonable. See *Baker v. Sec’y, HHS*, No. 99-653V, 2005 WL 589431 (Fed. Cl. Spec. Mstr. Feb. 24, 2005) (noting significant issues in Dr. Classen’s qualifications and hours claimed). I note that the two rheumatologists in this case billed for significantly fewer hours. A comparison of the 58 hours billed in this case, the 404.42 hours billed in *Baker*, and the 217.05 hours billed in *Heckler v. Sec’y, HHS*, No. 01-319V, (Fed. Cl. Spec. Mstr. Mar. 13, 2006) (unpublished), suggests a pattern of billing excess hours, particularly when compared to the hours billed by other experts, including Dr. Sundel in this case. Doctor Classen’s invoice does not indicate what he did, nor when he did it, and thus does not provide any support for the hours claimed. After discussions with both parties, and in order for the court to consider awarding the negotiated amounts, an agreement was reached to award Dr. Classen 10 hours - an amount likewise awarded to Dr. Sundel in this same case - at the stated rate of \$250.00 per hour.

\$70,962.00 for attorney fees and **\$40,472.74** in costs incurred by petitioner's counsel, Ronald Homer.

As compensation was awarded to petitioner, an award for fees and costs is mandated, pursuant to 42 U.S.C. § 300aa-15(e)(1). Further, the adjusted proposed amounts seem reasonable and appropriate. Accordingly, I hereby award the total of **\$178,422.66²** issued as:

\$178,422.66, in the form of a check payable jointly to petitioner and petitioner's counsel, Ronald Homer, for attorney fees and costs.

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 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. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally, Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir. 1991).

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