

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-694V

Filed: May 31, 2013

CODIE MIMS,

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Special Master Zane

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Petitioner,

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v.

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Stipulation; attorneys' fees and costs

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

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Respondent.

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William P. Ronan , III, The Ronan Law Firm, Overland Park, KS, for Petitioner;

Darryl R. Wishard, United States Dep't of Justice, Washington, D.C., for Respondent.

UNPUBLISHED DECISION ON ATTORNEYS' FEES AND COSTS¹

ZANE, Special Master.

On May 30, 2013, the parties in the above-captioned case filed a Stipulation of Facts Regarding Attorneys' Fees and Costs ("Stipulation") memorializing their agreement as to the appropriate amount of attorneys' fees and costs in this case. Petitioner requests a total award of \$4,400.00. Petitioner's counsel represents that Petitioner incurred no personal litigation costs. The undersigned awards the amount to which Respondent does not object.

¹ Because this decision contains a reasoned explanation for the Special Master's action in this case, the Special Master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 113 Stat. 2899, 2913 (Dec. 17, 2002). All decisions of the Special Master will be made available to the public unless they contain trade secret or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to redact such information before the document's disclosure. Absent a timely motion to redact, the decision will be made available to the public in its entirety. If the Special Master, upon review of a timely-filed motion, agrees that the identified material fits within the categories listed above, the Special Master shall redact such material from the decision made available to the public. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

Petitioner, Codie Mims, filed a petition for vaccine injury compensation on October 19, 2011. Petitioner alleged that the human papillomavirus (“HPV”) vaccinations she received on May 24, 2007, July 25, 2007, and November 28, 2007, caused her to suffer from myasthenia gravis. Petition, ¶¶1-3; Petitioner’s Exhibit (“P’s Ex.”) 1 at 14-16. In her petition, Petitioner stated that she was diagnosed with myasthenia gravis by her rheumatologist, Dr. Booth, nearly a year after she received the last vaccination, on November 19, 2008, see P’s Ex. 2 at 24, and by her neurologist, Dr. Austin, on November 24, 2008. See P’s Ex. 3 at 48.

Petitioner failed to prove by a preponderance of evidence that she suffered a “Table Injury” or that her conditions were “actually caused” by a vaccination. Decision filed August 10, 2012.

After the dismissal of Petitioner’s claim, there remained an issue of whether Petitioner could be awarded attorneys’ fees. That issue was resolved by the Supreme Court, which held that Petitioner could be awarded fees despite a dismissal for untimeliness if the claim was filed in good faith and there was a reasonable basis for it. *Sebelius v. Cloer*, ___ S.Ct, ___, 2013 WL 2149791 (May 20, 2013). Thus, even though the case was dismissed, Petitioner may be awarded attorneys’ fees and costs where her petition was brought in good faith and she had a reasonable basis for proceeding. See 42 U.S.C. § 300aa-15(e). Here, counsel for Petitioner spent time gathering medical records for Petitioner that gave indications of a possible timely connection between the onset of the injury and the date of filing. Thus, to that point, there was a reasonable basis for proceeding, and Petitioner’s counsel acted in good faith in so doing.

Based on the foregoing, Petitioner is eligible for an award of attorneys’ fees and costs. Respondent does not contend that Petitioner has not satisfied the requirements for an award of fees and costs.

After reviewing the request, the court finds the stipulated amount of \$4,400.00, in attorneys’ fees and costs to be reasonable. Based on the request’s reasonableness and pursuant to Vaccine Rule 13, the undersigned **GRANTS** the parties’ request as outlined in the Stipulation. The judgment shall reflect that Petitioner is awarded attorneys’ fees and costs as follows:

in a check made payable jointly to Petitioner (Codie Mims) and Petitioner’s counsel (William P. Ronan of The Ronan Law Firm), the amount of \$4,400.00.

The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/ Daria Zane
Daria J. Zane
Special Master

² Pursuant 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.