

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

E-Filed: July 12, 2010

No. 03-654V

<u>ROLF and ANGELA HAZLEHURST,</u>)	
parents of WILLIAM YATES)	
HAZLEHURST,)	
)	Attorneys Fees' and
)	Costs; MMR Vaccine;
Petitioners,)	Autism Claim
)	
v.)	
)	
SECRETARY OF THE DEPARTMENT)	TO BE PUBLISHED
OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
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Curtis R. Webb, Twin Falls, ID, for petitioners.

Linda Renzi, United States Department of Justice, Washington, DC, for respondent.

ATTORNEYS' FEES AND COSTS DECISION¹

On March 26, 2003, Rolf and Angela Hazlehurst (petitioners or the Hazlehursts),² as parents of William Yates Hazlehurst (Yates) filed a short-form petition³ pursuant to the

¹ Vaccine Rule 18(b) provides that all of the decisions of the special masters will be made available to the public unless an issued decision contains trade secrets or commercial or financial information that is privileged or confidential, or the decision contains medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. When a special master issues a decision or substantive order, the parties have 14 days within which to move for the redaction of privileged or confidential information before the document's public disclosure.

² On October 12, 2007, the undersigned granted petitioners' motion of the same date to amend the caption of the case to reflect the proper spelling of the petitioners' last name. All quotations in this decision spell petitioners' surname correctly, regardless of any error in the underlying document. Any alteration in the spelling of petitioners' surname is made without notation.

³ As permitted by the Order dated July 8, 2002, petitioners electing to participate in the Omnibus Autism Proceeding (OAP) were permitted to file a short-form "opt-in" petition. See OAP Order of 7/8/02 at 4. Each short-form petition would consist of the name of the injured child, the names of the injured child's parents or legal representatives,

National Vaccine Injury Compensation Program⁴ (the Act or the Program), 42 U.S.C. § 300aa-10, et seq. Petitioners filed an amended petition on June 13, 2007, alleging that “[t]he MMR [(measles, mumps, rubella)]⁵ vaccination that Yates Hazlehurst received o[n] February 8, 2001, or a combination of the MMR vaccination and the Thimerosal containing vaccinations that he received during the first 12 months [of life], caused Yates Hazlehurst to develop [regressive] autism.” Amended Petition (Am. Pet.) ¶ 5 (footnote added); see also id. at ¶ 8 (specifically alleging that “[b]y Summer 2001, his speech skills had begun to regress”). Petitioners also consented to the public disclosure of their claim as the second test case on the first theory of causation addressed in the Omnibus Autism Proceeding.⁶ See Petitioners’ Status Report dated July 26, 2007.

A four-day hearing was held in Charlotte, North Carolina, in October of 2007. The undersigned heard testimony from four fact witnesses and four expert witnesses. On February 12, 2009, a decision denying entitlement was issued.

On March 3, 2009, petitioners filed an Interim Petition for Attorney Fees and Costs (Fee Pet.). In the petition, petitioners represented that respondent had reviewed the draft interim petition and “d[id] not object to an interim award of attorney fees and costs in the amount requested.” Fee Pet. at 2 (emphasis removed). Petitioners’ counsel sought an award of \$221,977.57 in interim attorneys’ fees and costs of which \$168,082.00 were attorneys’ fees, \$30,800.00 were expert witness costs, \$17,282.09 were other costs incurred by petitioners’ counsel, and \$5,813.48 were costs incurred by petitioners. On March 5, 2009, the undersigned issued an interim fees and costs decision.

Subsequently, on September 21, 2009, petitioners filed an appeal with the United States Court of Appeals for the Federal Circuit. On May 13, 2010, the Court of Appeals issued a decision affirming the dismissal of petitioners’ claim.

On July 1, 2010, petitioners submitted a final fees and costs petition to which respondent does not object for attorneys’ fees and expenses incurred since the issuance of the interim fees petition. Petition for Attorney Fees and Costs.

and an election to opt into the OAP proceeding. Id. at 1. The petition “would not contain a detailed account of the relevant vaccinations and the history of [the] vaccinee’s disorder.” Id. In addition, the vaccinee’s medical records would not be required to accompany the petition. Id.

⁴ Hereafter, for ease of reference, all “section” references to the Vaccine Injury Compensation Act will be to the pertinent subsection of 42 U.S.C. § 300aa (2000).

⁵ The MMR vaccine is “a combination of live attenuated measles, mumps, and rubella viruses, administered subcutaneously for simultaneous immunization against measles, mumps, and rubella.” Dorland’s at 1999.

⁶ The Hazlehursts’ willingness to present their case as a test case in the OAP litigation is very much appreciated.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300 aa-15(e). Based on the reasonableness of petitioners' request and on respondent's counsel's agreement not to object to petitioners' counsel's fee request, the undersigned **GRANTS** the attorneys' fees and costs as outlined in the Petition for Attorney Fees and Costs.

The undersigned awards petitioners \$93,654.31 in fees and costs.

Petitioners are entitled to an award of final attorneys' fees and attorneys' costs and petitioners' costs. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in petitioners' favor in the amount of \$93,654.31 in attorneys' fees and attorneys' costs, and petitioner's costs.⁷ The judgment shall reflect that the Webb, Webb & Guerry firm may collect \$92,174.10 from petitioners. Petitioners may retain \$1,480.21 for costs borne by petitioners.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Special Master

⁷ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.