

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-0730V

Filed: May 26, 2010

MATTHEW and CARRIE NANCE,)	
as the Legal Representatives of their minor)	TO BE PUBLISHED
daughter, KATHERINE NANCE)	
)	Interim Award of
)	Attorneys' Fees and Costs;
Petitioners,)	Reasonable Amount Requested
)	to which Respondent Does Not
v.)	Object; Diphtheria, Tetanus, and
)	Acellular Pertussis Vaccine;
SECRETARY OF THE DEPARTMENT)	Afebrile Seizures
OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

Curtis R. Webb, Twin Falls, ID, for petitioners.

Althea Walker Davis, United States Department of Justice, Washington, DC, for respondent.

INTERIM ATTORNEYS' FEES AND ATTORNEYS' COSTS DECISION¹

CAMPBELL-SMITH, Special Master

¹ Because this document contains a reasoned explanation for the action of the undersigned, the document shall post 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, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has fourteen days within which to request the redaction "of any information furnished by that party (1) that is trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of timely objection, the entire document will be made publicly available.

On October 30, 2006, petitioners, Matthew and Carrie Nance (petitioners), filed a claim for compensation pursuant to the National Vaccine Injury Compensation Program (Vaccine Program or Program).² 42 U.S.C. §§ 300aa-1 to -34 (2006). A hearing on entitlement was held on March 5, 2009. On May 12, 2009, the undersigned conducted a telephonic status conference with the parties who informed the court that post-hearing briefing would not be necessary in this case. May 14, 2009 Order. A decision on entitlement is pending.

On May 19, 2010, petitioners' counsel filed a Petition for Interim Attorney[s'] Fees and Costs (Petition). Petitioners seek interim fees and costs pursuant to 42 U.S.C. § 300aa-15(e) of the National Childhood Vaccine Injury Act of 1986, as amended (the Vaccine Act), and Rule 13 of the United States Court of Federal Claims Vaccine Rules, and further to the guidance provided in Avera v. Secretary of the Department of Health and Human Services, 515 F.3d 1343 (Fed. Cir. 2008).

Based on the cited authority, petitioners request interim attorneys' fees and costs in the amount of \$38,000.00. Petition at 1. This amount includes an interim award of attorney's costs in the amount of \$11,037.92. Petition at 3. The requested amount is for attorney fees and costs incurred in the prosecution of petitioners' case through June 3, 2009. Petition Supporting Materials at 11. The interim fee petition also contemplates that petitioners' counsel will be compensated at a rate of \$175 per hour in 2006, \$220 per hour in 2007, and \$240 per hour for 2008, 2009, and 2010.

Based on the reasonableness of petitioners' request and on respondent's counsel's lack of objection to petitioners' counsel's interim fees request, the undersigned **GRANTS** the attorneys' fees and costs and petitioners' costs, as outlined in the interim fee petition.

It is the opinion of the undersigned that the circumstances of this case are appropriate for an interim award of petitioners' counsel's fees and costs of \$38,000.00. The undersigned determines that there is no just reason to delay the entry of judgment on an award of interim attorneys' fees and costs. Therefore, in the absence of a motion for review filed under Appendix B of the Rules of the United States Court of Federal Claims, the Clerk of the Court shall enter judgment in petitioners' favor for \$38,000.00 in interim attorneys' fees and attorneys' costs.³ Under Vaccine Rule 11(a), the parties may expedite

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10 et seq. (2006) (Vaccine Act or the Act). All citations in this Decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

³ Petitioners' counsel represents that petitioners themselves incurred no out-of-pocket expenses in the prosecution of this matter. Petition at 4.

entry of judgment by filing a joint notice renouncing the right to seek review.

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Special Master