

OFFICE OF SPECIAL MASTERS

(Filed: August 31, 2006)
No. 04-1771V
UNPUBLISHED

DARLA MEYERS, Guardian ad Litem for)	
MATTHEW MEYERS, a Minor Petitioner, ¹)	
)	
Petitioner,)	Attorney's Fees and Costs;
)	Amended Petition Reducing
v.)	Requested Fees
)	
SECRETARY OF THE DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

Thomas P. Gallagher, Somers Point, NJ, for Petitioner.

Glenn A. MacLeod, U.S. Department of Justice, Washington, DC, for Respondent.

ORDER AND DECISION²

I. Procedural History

¹ The case caption as filed lists the minor petitioner as “Matthews Meyers.” However, the records indicate that the correct spelling of the minor petitioner’s name is “Matthew Meyers.”

² Vaccine Rule 18(b) states 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. Within 14 days after the filing of a decision or substantive order with the Clerk of the Court, a party may identify and move for the redaction of privileged or confidential information before the document’s public disclosure.

On December 14, 2004, Ms. Darla Meyers (“petitioner”), as Guardian ad Litem for her son, Matthew Meyers, filed a petition under the National Childhood Injury Act³ (the Act or the Program) for the injuries of Matthew, who on October 31, 1997, December 12, 1997, February 28, 1998, February 15, 1999, and April 17, 2002, received the Diphtheria-Tetanus-acellular Pertussis (DTaP) vaccination.⁴ See Petition (Petn.), filed December 14, 2004. Petitioner alleges that Matthew developed Type I diabetes as a result of the first four vaccinations. See Petn. at 1. Petitioner further alleges that the vaccination on April 17, 2002 significantly aggravated Matthew’s diabetes. Id.

Because petitioner failed to provide a relevant and reliable medical theory supporting a logical sequence of cause and effect between Matthew’s vaccination and alleged injury, the undersigned dismissed petitioner’s claim by Decision dated May 22, 2006. Meyers v. Secretary of HHS, No. 04-1771V, 2006 WL 1593947 (Fed. Cl. Spec. Mstr. May 22, 2006).

On July 27, 2006, petitioner filed an Application for Attorney’s Fees & Costs (“P. App.”) requesting \$17,582.50 for attorneys’ fees and costs, \$790.83 for costs borne by petitioner’s counsel, and \$1,205.65 for costs borne by petitioner. Petitioner’s application included supporting documentation showing the nature of the costs incurred and the time that petitioner’s counsel expended for particular tasks in this case.

On Monday, August 7, 2006, counsel for the parties in this matter contacted the court, and petitioner requested leave of the court to amend his fees and cost motion to reflect the recent agreement between the parties whereby the request for petitioner’s legal fees in this case would be reduced to \$15,000.00. The court deemed petitioner’s request to amend his earlier fees and costs petition to be an oral motion and granted petitioner’s motion by Order dated August 8, 2006.

On August 21, 2006, the court issued an Order that afforded respondent’s counsel the opportunity to address whether or not respondent had any outstanding objections to any aspect of petitioner’s fees and costs request. Prior to receipt of the Order issued on

³ 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. § 300aa-10-§ 300aa-34 (2000 & West Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

⁴The DTaP vaccine is “a combination of diphtheria toxoid, tetanus toxoid, and pertussis vaccine; administered intramuscularly for simultaneous immunization against diphtheria, tetanus, and pertussis.” Dorland’s Illustrated Medical Dictionary 1998 (30th ed. 2003).

August 21, 2006, and further to a telephonic inquiry from the parties' counsel, a status conference was held on August 21, 2006.

During the status conference, the undersigned clarified that the Order that issued on August 8, 2006, was not a decision but simply an order granting petitioner's oral motion to amend his petition for fees and costs. The undersigned indicated that prior to issuing a decision, she anticipated receiving an affirmative representation from respondent's counsel that respondent had no objections to petitioner's request for fees and costs as amended by order dated August 8, 2006. Respondent's counsel stated that respondent did not object to petitioner's amended request for fees and costs, and the parties' counsel indicated that they intended to file a joint notice with the court stating that they would not seek review of the undersigned's decision.

III. Conclusion

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 petitioner's request and on respondent's counsel's lack of objection to petitioner's counsel's amended fee request, the undersigned **GRANTS** Petitioner's Application for Fees and Costs filed on July 27, 2006, as amended by Order dated August 8, 2006.

The undersigned awards petitioner's counsel \$15,000.00 in fees and \$790.83 in costs. The undersigned also awards petitioner \$1,205.65 in costs. The total award is summarized as follows:

I. Attorney Fees

Thomas Gallagher	\$15,000.00
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II. Costs:

Petitioner's Counsel's Costs	\$790.83
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Petitioner's Costs	\$1,205.65
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III. Total Fees and Costs

	\$16,996.48
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The clerk **SHALL ENTER JUDGMENT** for \$16,996.48. The award shall be made in the form of two checks. The first check shall be made payable jointly to petitioner and Mr. Thomas Gallagher in the amount of \$15,790.83. The second check

shall be made payable to petitioner in the amount of \$1,205.65. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to entered judgment herewith.⁵

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Special Master

⁵Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.