

OFFICE OF SPECIAL MASTERS

(Filed: June 16, 2006)

DO NOT PUBLISH

MONA SMITH,)	
)	
Petitioner,)	
)	
v.)	No. 01-0068V
)	Attorneys' Fees; Attorneys' Costs
SECRETARY OF)	Personal Expenses
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEYS' FEES AND COSTS¹

Petitioner, Mona Smith (Ms. Smith), seeks an award of \$5,808.28 in attorneys' fees and attorneys' costs for an action that she pursued under the National Vaccine Injury Compensation Program (Program).² See Amended Application for Attorneys' Fees and Costs (Amended Fee Petition), filed June 5, 2006. Ms. Smith's attorney of record, Clifford J. Shoemaker, Esq. (Mr. Shoemaker), attests that Ms. Smith did not incur any personal expenses as defined by General Order No. 9. See Application for Attorneys' Fees and Costs (Fee Petition), filed March 6, 2006, Exhibit 2. Respondent does not object to Ms. Smith's Amended Fee Petition. See Status Report, filed June 14, 2006, at 1.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

Ms. Smith did not receive Program compensation.³ Nevertheless, the statute enacting the Program accords discretion to the special master to “award an amount of compensation to cover” Ms. Smith’s “reasonable attorneys’ fees and other costs” as long as “the special master or court determines that” Ms. Smith possessed “a reasonable basis for the claim” and that Ms. Smith filed the petition “in good faith.” § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master’s “discretion is not without limit.” *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent “special circumstances,” the special master “should ordinarily” award attorneys’ fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has reviewed carefully Ms. Smith’s Amended Fee Petition. Based upon his experience, the special master determines that the Amended Fee Petition is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Ms. Smith’s favor for \$5,808.28.⁴ The judgment shall reflect that Mr. Shoemaker may collect \$5,808.28 from Ms. Smith.

The clerk of court shall send Ms. Smith’s copy of this decision to Ms. Smith by overnight express delivery.

John F. Edwards
Special Master

³ Indeed, because Mr. Shoemaker could not locate Ms. Smith, the special master dismissed the petition on November 23, 2005, for failure to prosecute. *See Smith v. Secretary of HHS*, No. 01-0068V, Decision (Fed. Cl. Spec. Mstr. Nov. 23, 2005); *see also* Fee Petition, Exhibit 2.

⁴ Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.