

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

DEBORAH M. EBENSTEIN, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN SERVICES, *

Respondent. *

No. 06-573V
Special Master Christian J. Moran

Filed: April 8, 2013

Attorneys' fees and costs; stipulation of fact; award in the amount to which respondent has not objected

UNPUBLISHED DECISION ON FEES AND COSTS¹

John F. McHugh, Law Office of John McHugh, New York, NY, for Petitioner;
Michael P. Milmo, U.S. Department of Justice, Washington, D.C., for Respondent.

On April 8, 2013, respondent filed a stipulation of fact concerning final attorneys' fees and costs in the above-captioned matter. Previously, on March 15, 2013, petitioner, Deborah M. Ebenstein, filed a motion for attorneys' fees and costs, along with supporting documentation. Based on subsequent informal discussions, wherein respondent raised objections to certain items, petitioner amended her application to request a total of \$74,000 in attorneys' fees and costs, an amount to which respondent does not object. The Court awards this amount.

Ms. Ebenstein filed for compensation in the Vaccine Program on August 7, 2006, alleging that the MMR vaccination caused her to suffer idiopathic thrombocytopenic purpura. After an evidentiary hearing during which experts testified, the special master, on September 1, 2010, issued a ruling finding that Ms. Ebenstein was entitled to compensation. The parties spent an extensive amount of time determining the amount of compensation to which she was entitled. The Secretary filed a Proffer on Award of Compensation and Ms. Ebenstein received compensation based on that proffer. Decision, filed Apr. 3, 2012. Because Ms. Ebenstein received compensation, she is entitled to an award of attorneys' fees and costs. 42 U.S.C. § 300aa-15(e).

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Ms. Ebenstein seeks a total of **\$74,000** in attorneys' fees and costs, which amount includes \$71,500 in attorneys' fees and costs, and \$2,500 in out-of-pocket litigation costs. Respondent has no objection to the amount requested for attorneys' fees and costs. After reviewing the request, the court awards petitioner the stipulated amount as follows:

- A. A lump sum of \$71,500.00 in the form of a check payable jointly to petitioner and petitioner's attorney, John F. McHugh, for attorneys' fees and costs available under 42 U.S.C. §300aa-15(e); and**
- B. A lump sum of \$2,500.00 in the form of a check made payable to petitioner for out-of-pocket expenses incurred in proceeding on the petition.**

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 shall enter judgment accordingly.²

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
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.