

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF THE SPECIAL MASTERS
No. 99-495V
Filed: March 26, 2009**

JONATHAN CARRINGTON, a minor, by his
mother and natural guardian, TAMMY
CARRINGTON

Petitioner,

v.

SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES

Respondent.

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Supplemental Fees and Costs,
Hours Expended, Tasks
Performed, Substantive
Basis for Appeal

Clifford Shoemaker, Esq., Shoemaker & Associates, Vienna, VA, for Petitioner.
Althea Davis, Esq., U.S. Department of Justice, Washington D.C., for Respondent.

SUPPLEMENTAL ATTORNEY FEES AND COSTS DECISION¹

Vowell, Special Master:

On November 20, 2008, petitioner filed an [107] application for supplemental attorney fees and costs for work performed in petitioning the Court of Federal Claims for review of my June 18, 2008 [99] decision on her initial application for fees and costs. Petitioner requested a total of \$7,685.14, including \$32.20 for litigation costs incurred by petitioner's counsel, and \$7,652.94 for attorney fees.

On December 1, 2008, respondent filed an objection to petitioner's supplemental application.² Respondent's Response to Petitioner's Motion to Allow Filing of Supplemental Materials ["Resp. to Supp. Fees and Costs Motion"]. Respondent objected to the amount of fees requested. Resp. to Supp. Fees and Costs Motion at 5. Respondent specifically argued that an award for 11 hours of work by counsel was

¹ Petitioner is reminded that, pursuant to 42 U.S.C. §300aa-12(d)(4) and Vaccine Rule 18, she has 14 days to request redaction of material in this decision that "would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b)(2).

² Respondent's initial argument, pertaining to the filing of a supplemental application before a decision on the initial fee application, is now moot, as the decision affirming my award was issued on December 10, 2008.

unwarranted for an appeal of a fees and costs decision that contained “little substantive argument regarding legal errors,” discussed irrelevant cases, and failed to acknowledge dispositive Federal Circuit decisions on the key issues. Respondent also specifically objected to an additional billing of 0.5 hours for filing transcripts from oral argument in an unrelated case. Resp. to Supp. Fees and Costs Motion at 2-3.

I have carefully reviewed the petition for review of my decision, the transcript of the oral argument, petitioner’s supplemental filing, and the invoice for supplemental fees and costs incurred in preparing a petition for review of my initial decision. I note that my initial award of \$63,995.67 was made in spite of in an untimely filed application for fees and costs on a petition that was dismissed for failure to prosecute. Respondent’s objections to the motion for supplemental fees are well-taken. Although the hourly compensation rates for petitioner’s attorneys, Mr. Shoemaker and Ms. Gentry appear reasonable, the time expended and some of the tasks performed are not.³ Petitioner billed 11.5 hours for preparing the motion for review and 8.2 hours to prepare for the oral argument before Judge Futey. Counsel billed a total of 26.53 hours of attorney time for all work on this appeal.⁴ I note that only a small fraction of this time was expended in preparing the initial fees and costs application in this case. See Application for Attorney Fees and Costs, filed March 17, 2008, at Tab 3, p. 14.

Applying my general experience,⁵ I find 6.0 hours by Mr. Shoemaker to be reasonable, 6.0 hours by Ms. Gentry to be reasonable, and none of the time by Ms. Knickelbein to be reasonably associated with the appeal itself. Including the attorney travel award of \$162.13 for Mr. Shoemaker, this represents an award of \$2107.69 for Mr. Shoemaker’s fees and \$1380.00 for Ms. Gentry’s fees, for a total of \$3,487.69 in supplemental attorneys fees. The costs of \$32.20 appear reasonable and are approved. I note that this represents a far more generous award than petitioner’s counsel received for similar work (and similar arguments) in *Sabella v. Secy, HHS*, 2009 U.S. Claims LEXIS 54, *53-57 (Fed. Cl. 2009).

³ Without engaging in a line by line analysis of petitioner’s invoice and briefs in this case, I note that several invoice entries are questionable (including a billing on June 19, 2008, for Mr. Shoemaker to discuss this case with himself, followed by another billing on the same date to discuss the case with his associate).

⁴ This includes 14.83 hours for Mr. Shoemaker, 12 hours for Ms. Gentry, and 0.20 hours for Ms. Knickelbein. It does not include Mr. Shoemaker’s travel time to and from oral argument, a period and fee I find to be reasonable.

⁵ See *Saxton v. Sec’y, HHS*, 3 F.3d 1517, 521 (Fed. Cir. 1993). See also *Wasson v. Sec’y, HHS*, 90-208V, 24 Cl. Ct. 482, 486 (1991), *aff’d*, 988 F.2d 131 (Fed. Cir. 1993). When the time expended or fees claimed are inadequately justified, the court may determine what to award, based on the court’s own experience.

Accordingly, I hereby award the total of **\$3,519.89**⁶ in the form of a check payable jointly to petitioner and petitioner's counsel for attorney fees and costs.

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.⁷

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Special Master

⁶ This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally, Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir. 1991).

⁷ Entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review. *See Vaccine Rule 11(a).*