

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 05-242V
Filed: August 3, 2010**

SHIRLEY SMITH, parent of Jordan
Smith, a minor,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Attorney Fees and Costs

DECISION ON ATTORNEY FEES AND COSTS¹

Vowell, Special Master:

In this case under the National Vaccine Injury Compensation Program,² I issued a [56] decision on July 22, 2010 denying entitlement to compensation and dismissing this case. On August 2, 2010, counsel filed petitioner’s [57] application for attorney fees and costs in this matter. That filing represented that respondent’s counsel had reviewed the application and does not object to the amounts requested therein.

The application indicated that counsel had attempted to obtain from his client a completed statement pursuant to General Order #9, delineating costs borne by petitioner and costs borne by her counsel, but had been unsuccessful. Counsel averred in the application that he had made several attempts since June 25, 2010 to obtain the General Order #9 statement from petitioner and had received no response. As detailed in my decision, issued July 22, 2010; my order to show cause, issued June 15, 2010;

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² The applicable statutory provisions defining the program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006).

and in petitioner's counsel's status reports, filed July 15, 2010; June 14, 2010; May 14, 2010; and April 16, 2010; petitioner has failed to respond to my orders, and her counsel's efforts to communicate about this case, since February, 2010. Further, petitioner's failure to submit an expert report or otherwise prosecute this case was the basis for my decision to dismiss it. In light of petitioner's refusal to respond to these numerous requests for her cooperation in this case, I will rule on the application for fees and costs without her General Order #9 statement.

I find that this petition was brought in good faith and that there existed a reasonable basis for the claim. Therefore, an award for fees and costs is appropriate, pursuant to 42 U.S.C. § 300aa-15(b) and (e)(1). Further, the proposed amount seems reasonable and appropriate. **Accordingly, I hereby award the total \$9,554.57³ as a lump sum in the form of a check payable jointly to petitioner, Shirley Smith, and petitioner's counsel, Conway, Homer & Chin-Caplan, PC, for petitioner's 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.⁴

IT IS SO ORDERED.

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

³ This amount is intended to cover all legal expenses incurred in this matter. 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).

⁴ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).