

**OFFICE OF SPECIAL MASTERS**

(Filed: June 10, 2005)

_____	)	
KATHY ARENA,	)	
as legal representative of her daughter,	)	
KAYLA J. ARENA,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 03-1800V
	)	DO NOT PUBLISH
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

**DECISION ON ATTORNEY’S FEES, ATTORNEY’S COSTS AND  
PERSONAL EXPENSES<sup>1</sup>**

Petitioner, Kathy Arena (Ms. Arena), as legal representative of her daughter, Kayla J. Arena (Kayla), seeks an award of \$52,556.75 in attorney’s fees, attorney’s costs and personal expenses as defined by General Order No. 9 for an action that she pursued under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> See Application for Award of Attorney’s Fees (Abbreviated Format) and for Reimbursement of Costs Incurred (Fee Petition), filed June 7, 2005, at 3. Respondent objected informally to certain aspects of Ms. Arena’s Fee Petition. Ms. Arena acceded informally to respondent’s objections.

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<sup>1</sup> 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.*

<sup>2</sup> 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. Arena did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to “award an amount of compensation to cover” Ms. Arena’s “reasonable attorneys’ fees and other costs” as long as “the special master or court determines that” Ms. Arena possessed “a reasonable basis for the claim” and that Ms. Arena 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 thoroughly Ms. Arena’s Fee Petition. The special master has considered carefully respondent’s informal objection to Ms. Arena’s Fee Petition and Ms. Arena’s informal accession to respondent’s objections. Based upon his experience, the special master determines that Ms. Arena shall receive an award of \$42,436.75 in attorney’s fees, attorney’s costs and personal expenses.

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Ms. Arena’s favor for \$42,436.75. The judgment shall provide that Ms. Arena’s attorney of record, Andrew W. Dodd, Esq. (Mr. Dodd), may collect \$39,578.75 from Ms. Arena.<sup>3</sup>

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

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John F. Edwards  
Special Master

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<sup>3</sup> \$42,436.75 - \$2,858.00 for Ms. Arena’s personal expenses. *See* Fee Application, Exhibit 9.