

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: February 6, 2008)

DO NOT PUBLISH

JESTINE LACHAPELLE,)	
as legal representative of the estate of her son,)	
JOSHUA LACHAPELLE,)	
)	
Petitioner,)	
)	
v.)	No. 05-1106V
)	Attorney's Fees; Attorney's Costs;
SECRETARY OF)	Personal Expenses
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

**DECISION ON ATTORNEY'S FEES, ATTORNEY'S COSTS
AND PERSONAL EXPENSES¹**

Petitioner, Jestine Lachapelle (Ms. Lachapelle), as legal representative of the estate of her son, Joshua Lachapelle (Joshua), seeks an award of 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).² In an amended application for fees and costs that she filed on January 29, 2008, Ms. Lachapelle requests \$62,000.00. *See* Amended Application for Fees and Costs (Amended Fee Petition), filed January 29, 2008, at 1. According to Ms. Lachapelle, the amount includes \$1,500.00 for her personal expenses as defined by General Order No. 9. *See*

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.

Amended Fee Petition at 1. Respondent does not object to Ms. Lachapelle's Amended Fee Petition. See Status Report, filed February 1, 2008, at 1.

Ms. Lachapelle 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. Lachapelle's "reasonable attorneys' fees and other costs" as long as "the special master or court determines that" Ms. Lachapelle possessed "a reasonable basis for the claim" and that Ms. Lachapelle 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 considered carefully the record as a whole. Based upon his experience, the special master determines that an award of \$62,000.00 in attorneys' fees, attorneys' costs and personal expenses as defined by General Order No. 9 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. Lachapelle's favor for \$62,000.00 in attorneys' fees, attorneys' costs and personal expenses as defined by General Order No. 9. The judgment shall reflect that Ms. Lachapelle's attorney of record, Thomas P. Gallagher, Esq. (Mr. Gallagher), may collect \$60,500.00 from Ms. Lachapelle.³ Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a *joint notice* renouncing the right to seek review.⁴

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

John F. Edwards
Special Master

³ \$62,000.00 - \$1,500.00 for Ms. Lachapelle's personal expenses as defined by General Order No. 9.

⁴ The special master emphasizes a "joint notice" renouncing the right to seek review in order to avoid the confusion and the administrative delay generated at times by the submission of separate notices renouncing the right to seek review.