IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

* *		
ERIN SILVA,	*	
	*	No. 10-101V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: June 22, 2012
	*	
SECRETARY OF HEALTH	*	Attorneys' fees and costs;
AND HUMAN SERVICES,	*	reasonable basis.
	*	
Respondent.	*	
* *		

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for petitioner; Darryl R. Wishard, United States Dep't of Justice, Washington, D.C., for respondent.

PUBLISHED DECISION DENYING ATTORNEYS' FEES AND COSTS[1]

In a February 18, 2010 petition, Erin Silva alleged that the human papillomavirus ("HPV") vaccine caused her to suffer a neurological demyelinating injury. After her attorneys expressed an interest in withdrawing from the case, Ms. Silva's case was concluded adversely to her in a decision filed November 30, 2011.

Despite not receiving any compensation, Ms. Silva requests an award for her attorneys' fees and costs as permitted by the Vaccine Act. Ms. Silva's request is denied because she has not established one of the criteria to be eligible for an award, namely, that her petition had a reasonable basis.[2] Ms. Silva's medical

[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 ruling 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.

[2] The statute also requires a finding of "good faith." The Secretary has not challenged Ms. Silva's good faith. Resp't Opp'n, filed May 18, 2011, at 12 n.12.

records, which her attorneys possessed before they filed her petition, cast doubt upon, rather than support, her claim. The attorneys' delay in reviewing those medical records until after the petition was filed means that their pre-filing investigation was neither diligent nor adequate. Had they reviewed the material, they would not have pursued this case. Thus, Ms. Silva is not entitled to an award of attorneys' fees.

I. Factual and Procedural Background

A. Medical Records

At 14 years of age, on March 8, 2007, Ms. Silva received her second dose of the HPV vaccine from her primary care physician, Dr. Manuel Arroyo. Exhibit 1 at 24. Between April 5 and 16, 2007, Ms Silva saw Dr. Arroyo for various problems, mostly complaints about back and leg pain. Exhibit 11 at 13-15. An MRI of her lumbar spine, taken on April 16, 2007, was essentially normal. Exhibit 2.

On April 17, 2007, Dr. Arroyo recommended a discussion with Dr. Janumpally, a neurologist. Exhibit 11 at 13-15. Dr. Janumpally saw Ms. Silva "for a stat evaluation." Dr. Janumpally recorded that Ms. Silva had "hyperreflexia in both lower extremities with sensory level around the level of T11." He diagnosed Ms. Silva as having transverse myelitis probably with a postviral etiology. Exhibit 2 at 92. Transverse myelitis is a disease impairing the nerves in the spinal cord. See Doe 60 v. Sec'y of Health & Human Servs., 94 Fed. Cl. 597, 598 n.2 (2010) (discussing transverse myelitis), aff'd 656 F.3d 1343, 1353 (Fed. Cir. 2011). At the time of his dictation, Dr. Janumpally was "not sure about [the] correlation with the HPV virus vaccination given in December of last year."[3] He admitted Ms. Silva to Antelope Valley Hospital. Exhibit 2 at 92.

Although an MRI of her lumbar spine was normal, Dr. Janumpally found on admission that Ms. Silva's symptoms were "consistent with transverse myelitis." Exhibit 3 (Records from Antelope Valley Hospital) at 10-11, 16, 18, 21. She was admitted for "close observation." Exhibit 3 at 16.

On April 18, 2007, Ms. Silva had a MRI of her thoracic spine. Exhibit 3 at 39-40. Dr. Janumpally said her thoracic spine "appeared to be normal." Exhibit 2

[3] Dr. Janumpally's reference to a HPV vaccination in "December" of 2006 is mistaken. Ms. Silva received the first dose on January 11, 2007. Exhibit 1 at 31.

at 89. When Ms. Silva was discharged on April 20, 2007, her diagnosis remained acute transverse myelitis. Exhibit 3 at 16. When Dr. Janumpally saw her next, he stated that Ms. Silva's transverse myelitis "seems to be stable with some improvement." Dr. Janumpally also recommended psychological counseling. Exhibit 2 at 89 (report dated April 23, 2007).

Ms. Silva received a second opinion from Dr. Niesen, a neurologist from Cedars-Sinai Medical Center, on June 16, 2007. Dr. Niesen noted that her "history and findings are consistent with idiopathic acute transverse myelitis." He admitted her for further treatment and pain management. Exhibit 4 (records from Cedars-Sinai Medical Center) at 11.

During this admission, Ms. Silva underwent several tests, including an MRI of the brain and MRIs of her spine. The brain MRI and the cervical spine MRI were normal. Another MRI showed "lower thoracic degenerative disc disease" and yet another MRI revealed "mild degenerative changes of the lower lumbar spine." Exhibit 4 at 14-16, 28-29. Following these tests and the continued care of Ms. Silva, Dr. Niesen stated that Ms. Silva did not suffer from transverse myelitis. In a note, dated July 1, 2007, he stated that there "are no confirmatory studies for transverse myelitis." Exhibit 4 at 177.[4]

In the absence of test results showing transverse myelitis, Dr. Niesen diagnosed Ms. Silva as having a conversion disorder. Conversion disorder is "a mental disorder characterized by [symptoms including a loss or alteration of voluntary motor or sensory functioning suggesting physical illness] and having no demonstrable physiological basis." Dorland's at 556 (defining conversion

[4] Attorneys from Ms. Silva's law firm have been involved with numerous cases in which an MRI was used to diagnose transverse myelitis. E.g. Caves v. Sec'y of Health & Human Servs., 100 Fed. Cl. 119, 123 (Fed. Cl. 2011), aff'd No. 2011-5108, 463 Fed. Appx. 932 (Fed. Cir. Feb. 14, 2012); Monaco v. Sec'y of Health & Human Servs., No. 00-782V, 2006 WL 5606257, at *5 (Fed. Cl. Spec. Mstr. Dec. 8, 2006) (a treating doctor interpreted an MRI of the cervical spine with multiple lesions as suggesting transverse myelitis); Tufo v. Sec'y of Health & Human Servs., No. 98-108V, 2001 WL 286911, at *6 (Fed. Cl. Spec. Mstr. March 2, 2001) (petitioner's expert testified that petitioner "had an MRI which discovered that he has TM"). Thus, the negative MRI studies should have served as a red flag for her attorneys. Dr. Nieson's rejection of transverse myelitis as a diagnosis for Ms. Silva should not have surprised her attorneys.

disorder). She was discharged from Cedars-Sinai on July 2, 2007, on Neurontin to manage her pain, and recommended for outpatient physical therapy. She was also ordered to follow-up with child psychiatry and outpatient psychiatry, as well as a pediatric neurologist. Exhibit 4 at 24-27.[5]

On October 16, 2007, Ms. Silva's therapist, Alice C. Brown, referred Ms. Silva to AV Behavioral Medicine.[6] This note indicates that depression and conversion disorder were ruled out, although the basis for that conclusion is not given. Exhibit 5 (Records of AV Behavioral Medicine) at 5.

B. Law Firm Actions

1. Initial Processing and Proceedings on Entitlement

According to the attorneys' timesheets, in September 2008, Ms. Silva's mother contacted the law firm that eventually represented her. An attorney spent three hours conferring with her and researching transverse myelitis and the HPV vaccine. In October and November 2008, paralegals obtained medical records from various providers. The process of obtaining records continued, although the paralegal's activity was less frequent, for approximately one year. On September 14, 2009, the law firm received records from Cedar Sinai Hospital, including Dr. Niessen's report. In November 2009, the paralegal prepared "exhibits 1-10 for case summary and electronic filing." There is no information that anyone from the law firm substantively reviewed the medical records.

The next entry is in February 2010. On February 12, 2010, a paralegal spent one-tenth of an hour, starting a "stage 2" memo. Although not specifically explained in Ms. Silva's case, her attorneys in another case explained that a "stage 2" memo is "comprehensive, detailed, accurate, and complete summary of a petitioner's past medical and/or educational, rehabilitation, physical therapy, psychological, or similar records." Hawkins v. Sec'y of Health & Human Servs., No. 00-646V, 2007 WL 5159581, at *1 (Fed. Cl. Spec. Mstr. April 30, 2007).[7]

[5] This discharge summary is particularly detailed about Ms. Silva's history.

[6] The handwritten signature of the person who saw Ms. Silva is not easily deciphered.

[7] While Ms. Silva's case was pending, another special master "reduce[d]all billing entries labeled merely 'stage 2' by 50 percent both because the undersigned

On February 16, 2010, an associate attorney spent .5 hours in "review[ing] case file, draft[ing] skeleton" and forwarding to a senior attorney. On the same day, the senior attorney spent .2 hours editing the petition and cover letter. The next day, a paralegal spent .3 hours preparing a "skeletal petition" and drafting a motion to convert the case to electronic case filing. The Clerk's Office received and filed Ms. Silva's petition on February 18, 2010.

Counsel's description of the petition as "skeletal" is apt. The petition is generic --- much like petitions that this law firm has filed to initiate other cases in the Vaccine Program. The only information that specifically refers to Ms. Silva is the date that she received the vaccination, and a statement alleging that the HPV vaccine caused her to develop a "neurological demyelinating injury." Petition, ¶¶ 1-2. No medical records were submitted in conjunction with the petition.

It is worthwhile to pause to review the attorneys' work as of February 18, 2010, the date Ms. Silva filed her petition. Almost all the work had been performed by paralegals in collecting medical records. Except for three hours associated with the intake of the case back in September 2008, attorneys had spent very little time on her case. Two attorneys spent less than one hour (combined) preparing her petition. Before the attorneys filed the petition, they had not spent any time analyzing the medical records despite the firm's acquisition of those records.

After the petition was filed, paralegals started work on the firm's "stage 2 memo." Records show that in February and early March 2010, paralegals summarized medical records as part of the "stage 2 process" for approximately 20 hours. Paralegals also continued to request additional medical records.

As part of that process, a paralegal recognized that records from Drs. Abdallah Farrakh and Yu-En Lee of the Antelope Valley Neuroscience Medical Group, and records from Dr. Manuel Arroyo required transcription. Accordingly, on March 10, 2010, the paralegal prepared a motion to authorize a subpoena on these doctors requiring transcription. This motion was granted on March 16, 2010. Timesheets show that the law firm received a transcription in early April 2010.

---

has no idea how much of these entries is indeed billable, and to encourage counsel to document properly their billing hours in the future." Calise v. Sec'y of Health & Human Servs., No. 08-865V, 2011 WL 2444810, at *7 (Fed. Cl. Spec. Mstr. June 13, 2011).

Also, on March 16, 2010, Ms. Silva filed exhibits 1-10. In April, Ms. Silva filed exhibits 11-13, which include transcriptions and Ms. Silva's psychotherapy record. Another transcribed medical record, the records from neuroscience medical group, was filed on May 19, 2010. Ms. Silva filed a status report stating that all medical records have been filed. This filing informed the Secretary that she should begin her review of the evidence. See Vaccine Rule 4.

On June 28, 2010, the Secretary filed her responsive report. The Secretary sought some additional medical records. On the merits, the Secretary noted that whether Ms. Silva suffered from transverse myelitis or conversion disorder was not clear. The Secretary argued that regardless of Ms. Silva's condition, whether transverse myelitis or conversion disorder, none of Ms. Silva's treating doctors had linked any problem to the HPV vaccine, and she had not submitted a report from an expert retained for this litigation. Thus, the Secretary recommended that compensation be denied.

As requested by the Secretary, Ms. Silva attempted to obtain additional medical records. Paralegals diligently pursued requests for records in July, August, and September 2010.

Meanwhile, a status conference was held on July 21, 2010. At that time, Ms. Silva's counsel did not know whether she was currently using a wheelchair and did not know whether she was currently receiving counseling. When asked to propose a next step in the case, Ms. Silva's attorney proposed that she would retain an expert and file a report in 60 days.

On July 22, 2010, the associate attorney who appeared at the previous day's status conference conferred with a senior attorney about "DOJ's concerns with the case." Other conferences among attorneys took place on August 6, 2010, and August 11, 2010.

The result of these discussions was that Ms. Silva's attorneys decided that they wanted to stay the case. In early September 2010, law clerks and associate attorneys spent approximately 7.5 hours drafting a motion to stay.[8] The Secretary

[8] This law firm filed similar motions to stay in four other cases in which the petitioner alleged that the HPV vaccine caused her injury. The docket numbers for those cases are 09-603V (motion to stay filed Sept. 7, 2010); 10-99V (motion to

opposed an indefinite extension but agreed that Ms. Silva was entitled to one stay of 30 days as provided in 42 U.S.C. § 300aa—12(d)(3)(A); Vaccine Rule 9. Resp't Opp'n, filed Oct. 6, 2010.

Another status conference was held on October 14, 2010. The undersigned indicated that the case would not be stayed indefinitely. The undersigned also indicated that Ms. Silva needed to file her affidavit and Ms. Silva's attorney requested 45 days to do so.

During this status conference, the parties agreed that the first task was resolving whether Ms. Silva suffered from transverse myelitis or conversion disorder. See Broekelschen v. Sec'y of Health & Human Servs., 618 F.3d 1339, 1345-56 (Fed. Cir. 2010).[9] When asked how much time was needed to obtain an expert report, Ms. Silva's counsel proposed 60 days. These discussions were memorialized in the subsequent order.

In October and November, paralegals and associate attorneys consulted an expert or experts. On November 17, 2010, a senior attorney and associate attorney spoke to an expert about his or her preliminary report. (The timesheets do not identify this person by name. However, Ms. Silva has included an invoice from Spencer G. Weig, MD in her materials. Pet'r Appl'n, tab B, at 8.)

At the same time, law clerks and associate attorneys were drafting Ms. Silva's affidavit. On November 29, 2010, the attorneys submitted this affidavit as exhibit 17.

Ms. Silva also sought additional time to file an expert report. Her November 29, 2010 motion, which requested an additional 30 days, was granted in a December 1, 2010 order. On December 1, 2010, a senior attorney and associate attorney discussed how to proceed with Ms. Silva's case. Apparently, the attorneys decided that they did not want to continue Ms. Silva's case because on December 17, 2010, an associate attorney was writing a "reject letter" to the firm's client.

---

stay filed Oct. 1, 2010); 10-103V (motion to stay filed Sept. 17, 2010); and 10-485V (motion to stay filed Nov. 4, 2010).

[9] Subsequently the Federal Circuit stated "In the absence of a showing of the very existence of any specific injury of which the petitioner complains, the question of causation is not reached." Lombardi v. Sec'y of Health & Human Servs., 656 F.3d 1343, 1353 (Fed. Cir. 2011).

On December 29, 2010, Ms. Silva filed a second motion for additional time to file an expert report. In this motion, Ms. Silva requested an extension of 30 days to discuss the future proceedings of her case with her counsel. This motion was granted in an order, dated January 3, 2011, which reset Ms. Silva's expert report deadline and scheduled a status conference for February 4, 2011.

In January 2011, there are several entries documenting phone calls with client. Other entries indicate that there were discussions about trying to determine how the client intended to proceed. On January 28, 2011, Ms. Silva filed her third motion for an enlargement of time to obtain an expert report. Ms. Silva's attorneys indicated that they had been unable to reach her to discuss the future proceedings of her case.

The ensuing order permitted Ms. Silva an opportunity to find alternative counsel. The attorneys spent relatively little time on Ms. Silva's case during March and April.

2. Application for Attorneys' Fees on an Interim Basis

On May 13, 2011, Ms. Silva filed a document captioned "Petitioner's Interim Application for Final Attorneys' Fees and Costs" (capitalization changed without notation). She requested approximately $18,000 in total.

The filing of the request for attorneys' fees sparked activity on Ms. Silva's case. Within two days, the Secretary objected to the request for attorneys' fees.[10] Regarding reasonable basis, the Secretary argued that "To have a 'reasonable basis,' petitioners' claim must, at a minimum, be supported by medical records or medical opinion. 42 U.S.C. § 300aa—13(a)(1)." The Secretary maintained that "None of petitioner's treating physicians stated that she suffered from a vaccine-related injury, and she has filed no expert reports supporting either that contention or that she suffered from either [transverse myelitis] or a 'neurological demyelinating injury.'" The Secretary concluded, "until petitioner presents

[10] The Secretary argued four points: (A) as a matter of law, the special master lacked the authority to award attorneys' fees on an interim basis; (B) as a matter of discretion, the special master should not award attorneys' fees on an interim basis; (C) Ms. Silva's case lacked a reasonable basis; and (D) the amount requested for attorneys' fees was unreasonable. Ensuing events made the Secretary's arguments regarding any interim award (points A and B) moot.

evidence that she suffered from an injury that could be caused by receipt of a vaccination, there is absolutely no reasonable basis for her claim, and thus, no reasonable basis for an award of interim attorneys' fees and costs." Resp't Opp'n at 12-14.

On June 23, 2011, Ms. Silva filed a lengthy reply.[11] For reasonable basis, Ms. Silva contended that "reasonable basis was present at each stage of counsel's evaluation of her case." She noted that she received the HPV vaccine, which was introduced in 2006. Ms. Silva stated that "there have been over 18,000 VAERS reports of various adverse events following HPV vaccination in the United States. Of note, Merck [the HPV vaccine manufacturer] lists transverse myelitis among the list of documented post marketing adverse reactions to Gardasil in its packaging insert." Pet'r Reply at 13-14.[12] Ms. Silva stated that a neurologist, Dr. Janumpally, diagnosed her with transverse myelitis and vaccines have been found capable of causing transverse myelitis. Id. at 15-16 (citations omitted). Ms. Silva concludes "Where the diagnosis is unclear or where there are competing diagnoses, it is reasonable to seek the counsel of appropriate medical experts. [Ms. Silva's] case was filed and litigated with a reasonable basis." Id. at 17.

The next day, the Secretary filed a sur-reply. Most of this brief was devoted to the issue of reasonable basis. The Secretary observed that Ms. Silva "was represented by [her] counsel for 17 months before the petition was filed." Thus, this case is not one in which the statute of limitations compelled the filing of a petition without a review of the medical records. In these 17 months, Ms. Silva's attorneys should have recognized the lack of reasonable basis. The Secretary questioned the accuracy of the transverse myelitis diagnosis because her MRIs were normal, she did not respond to treatment for transverse myelitis, and Dr. Janumpally recommended psychological counseling because Ms. Silva claimed she could not walk but she had good motor function. Resp't Sur-Reply at 1-2.

---

[11] Part of that brief was devoted to the availability and appropriateness of an award on interim basis. Those arguments are now moot. She also addressed the amount of fees. Finally, Ms. Silva's reply was accompanied by a supplemental motion for attorneys' fees, requesting an additional $1,932.20.

[12] Ms. Silva's use of the term "adverse reaction" is not correct. The package insert summarizes information in which a certain event was reported to have occurred after the vaccination without regard for whether the vaccine caused the event. 21 C.F.R. § 600.80(*l*); Werdertisch v. Sec'y of Health & Human Servs., No. 99-319V, 2005 WL 3320041, at *8 (Fed. Cl. Spec. Mstr. Nov. 10, 2005).

Additionally, the Secretary noted that there are no decisions finding that the HPV vaccine (as opposed to other vaccines) causes transverse myelitis. The Secretary argued "Given the lack of case precedent, coupled with the obvious lack of reasonable basis for such a claim based on petitioner's medical records alone, her attorney needed either affidavits or other supporting documentation, such as a medical expert report, to support the claims set forth in the petition when it was filed. See 42 U.S.C. Sections 300aa—11(c) and 13(a)(1)(B)." Id. at 2 n.3. The Secretary concluded, "Given these many deficiencies, petitioner's counsel needed to perform the basic inquiries required by an attorney prior to filing of a Vaccine Act petition – to obtain either affidavits or other supporting documentation, such as an expert medical opinion report, as mandated by Section 11(c)(1) of the Act." Id. at 3 (footnotes omitted).

A status conference was held on June 27, 2011. Ms. Silva's attorney communicated that her firm did not wish to remain "counsel of record" and was seeking to withdraw. However, Ms. Silva's attorney also wished to respond to the Secretary's sur-reply regarding attorneys' fees.

Ms. Silva filed a response on July 18, 2011. Ms. Silva maintained that her case had a reasonable basis primarily because she suffered from transverse myelitis. She argued that other doctors affirmed the transverse myelitis diagnosis and that the Secretary misinterpreted Dr. Janumpally's reasons for referring her to psychotherapy. Ms. Silva also maintained that the onset of her transverse myelitis (approximately four weeks after vaccination) was appropriate based upon cases involving other vaccines and transverse myelitis.[13]

3. Conclusion of Case

After the activity regarding attorneys' fees subsided, the undersigned ordered Ms. Silva to file a report from an expert addressing whether she suffered from a conversion disorder or transverse myelitis. This report was due by September 26, 2011. Petitioner was advised that in the absence of an expert report, her claim would be reviewed on the basis of the record. Order, filed July 26, 2011.

[13] Again, Ms. Silva submitted an additional request for attorneys' fees, increasing the amount by $1,991.50. And, again, the Secretary objected the next day.

On September 26, 2011, Ms. Silva stated that she would not file additional information. A decision issued on November 30, 2011, denying Ms. Silva's claim based on lack of evidence.

After judgment on Ms. Silva's claim entered, the only remaining issue was attorneys' fees. On February 1, 2012, the undersigned invited Ms. Silva to file an updated motion for attorneys' fees. Ms. Silva made this submission on February 9, 2012, adding $1,298.90. This time, however, the Secretary did not file any objection.

II. Statutory Scheme for Filing Petitions and Recovering Attorneys' Fees

Congress created the Vaccine Program with at least two provisions that make the Vaccine Program different from traditional litigation. At the beginning of the case, when petitioners file their petition, they are required to submit evidence supporting their claim for compensation. At the end of the case, petitioners who have not received compensation remain eligible for an award of attorneys' fees and costs.

The Secretary's arguments against Ms. Silva's eligibility for attorneys' fees and costs involve both the provisions regarding the filing of petitions and the meaning of the term "reasonable basis." It is the Secretary's argument that Ms. Silva has not established a "reasonable basis for ever filing" her petition. Resp't Sur-Reply at 4. For this reason, the analysis begins with a review of what the statute says about filing petitions.

A. Filing Petitions

The process for filing a case in the Vaccine Program is unusual. The Vaccine Act states that

> A petition for compensation under the Program for a vaccine-related injury or death shall contain
> (1) except as provided in paragraph (3), an affidavit, and supporting documentation demonstrating [five elements, which are discussed below].

42 U.S.C. § 300aa—11(c). The next paragraph further specifies that the petition shall contain "vaccination records associated with the vaccine allegedly causing the injury, pre- and post-injury physician or clinic records." Section 11(c)(2).

Paragraph (3) of section 11(c) permits the petitioner to submit a statement identifying those records that were "described in paragraph (1) or (2) which are unavailable to the petitioner and the reasons for their unavailability."[14]

By its express terms, section 11(c) requires "supporting documentation" (paragraph 1) and "records" (paragraph 2). The statute uses the term "shall," which is usually interpreted as a mandatory provision. See Hellebrand v. Sec'y of Health & Human Servs., 999 F.3d 1565, 1570 (Fed. Cir. 1993) (distinguishing "shall" from "may"). This requirement is made more emphatic in paragraph 3 in which Congress stated that when those records were not available, the petitioner needed to submit a statement, explaining why those documents were not available.[15]

---

[14] The Court of Federal Claims has further defined these requirements. Vaccine Rule 2 provides, in relevant part,

(c) **Contents of a Petition**

(1) ***The Petition***. The petition must set forth:

(A) a short and plain statement of the grounds for an award of compensation, including:

* * *

(iii) a specific description of the injury alleged;

(1) ***Required Attachments***. As required by 42 U.S.C. § 300aa—11(c), the petition must be accompanied by the following documents:

(A) ***Medical Records***. The petitioner must include all available medical records supporting the allegations in the petition, including physician and hospital records relating to:

* * *

(ii) the injury, or death, . . .

(iii) any post-vaccination treatment of the injured person, including all in-patient and out-patient records, provider notes, test results, and medication records;

(B) ***Affidavits***.

(i) If the required medical records are not submitted, the petitioner must include an affidavit detailing the efforts made to obtain such records and the reason for their unavailability.

[15] By this exception, Congress acknowledged that petitions could be supplemented with medical records. See Stewart v. Sec'y of Health & Human

In addition to stating that the petition shall contain documentary evidence, the statute indicates what those documents should contain. Section 11(c) states that the petition "shall contain . . . supporting documentation demonstrating" various elements. The root of the term "supporting," "support," means "to provide corroborating evidence for." The American Heritage Dictionary p. 1222 (2d College ed. 1985). The term "demonstrating" means "to prove or make evident by reasoning or adducing evidence." Id. at 380. See Hervey v. Sec'y of Health & Human Servs., 88 F.3d 1001, 1002 (Fed. Cir. 1996) (using dictionary to define a term in the Vaccine Act). Thus, in the statutory scheme designed by Congress, the petition shall contain documents providing evidence for the claim made in the petition.

Section 11(c)(1), in turn, is referenced in the section that defines when a petitioner is entitled to compensation. That provision states that the petitioner is awarded compensation when, in relevant part, "the petitioner has demonstrated by a preponderance of the evidence the matters required in the petition by section 300aa-11(c)(1) of this title." 42 U.S.C. § 300aa--13(a)(1); accord Massing v. Sec'y of Health & Human Servs., 926 F.2d 1133, 1135 (Fed. Cir. 1991).

As mentioned previously, there are five "matters required" in section 11(c)(1). These correspond to paragraphs (A) through (E). To be entitled to compensation, petitioner must establish all these elements by a preponderance of the evidence. Section 13(a)(1).

Of those five elements, the most commonly contested element is (C), which concerns causation. The statute creates two methods of establishing causation. The first is to show that the person suffered an injury listed on the Vaccine Injury Table. With the Vaccine Injury Table, causation is presumed and the person is entitled to compensation unless the Secretary shows something else caused the injury. Shalala v. Whitecotton, 514 U.S. 268, 270-71 (1995). The second route, which is the one taken by Ms. Silva, is for injuries not listed on the Vaccine Injury Table. For those cases, the petitioner must show that a vaccine caused the injury. Section 11(c)(1)(C)(ii)(I). These are often called "causation-in-fact" cases. See Moberly v. Sec'y of Health & Human Servs., 592 F.3d 1315, 1321 (Fed. Cir. 2010); Capizzano v. Sec'y of Health & Human Servs., 440 F.3d 1317, 1324 (Fed. Cir. 2006).

Servs., No. 02-819V, 2002 WL 31965743, at *6 (Fed. Cl. Spec. Mstr. Dec. 30, 2002).

By the time Ms. Silva filed her petition in 2010, the elements of a causation-in-fact case were well-established. The Federal Circuit defined those elements in Althen v. Sec'y of Health & Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005).

Althen also discussed what type of evidence that petitioners could use to establish those elements. To be entitled to compensation, petitioners need to substantiate their claim with "medical records or medical opinion." (emphasis in original). Id. at 1279 (citing section 13(a)(1)). "Medical records" and "medical opinion" stand in contrast to opinions expressed by a petitioner. A petitioner's own statement is not a sufficient basis to award compensation because a special master may not award compensation "based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." Section 13(a)(1).

In sum, in respect to the initial filing, the Vaccine Act is fairly demanding. Unlike a system in which pleadings are adequate when they provide fair notice, a petition in the Vaccine Act "shall contain . . . supporting documentation." Congress's requirement for a comprehensive petition is the foundation for much of the Vaccine Program. For example, Congress expected that special masters would decide a case within 240 days of its filing. See 42 U.S.C. § 300aa—12(d)(3)(A). This expeditious case processing, to which appellate authorities refer, see Whitecotton, 514 U.S. at 269; Widdoss v. Sec'y of Health & Human Servs., 989 F.2d 1170, 1172 (Fed. Cir. 1993) (discussing legislative history), cannot occur when petitioners do not present a comprehensive case initially.

As discussed below, a primary issue is the degree to which Ms. Silva complied with the requirements regarding the filing of an initial petition. The Secretary essentially argues that because Ms. Silva did not comply with the statutory requirements for filing a petition, Ms. Silva does not qualify as eligible for attorneys' fees. Resp't Opp'n, filed May 18, 2011, at 14. The criteria for being awarded attorneys' fees are discussed next.

B. Attorneys' Fees

Under the "American rule," each litigant pays the fees of his (or her) attorney. Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240 (1975). Congress, in some contexts, has altered this rule by allocating the costs of litigation differently. Most fee-shifting statutes authorize awards to a "prevailing party" and do not authorize awards to those parties that do not prevail. Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 603

(2001). Effectively, for most fee-shifting statutes, there are two groups of litigants: prevailing parties and non-prevailing parties.

The Vaccine Act is different. In the Vaccine Program, petitioners fall into three classes. The first class is the group of petitioners who are prevailing parties in that they are awarded compensation. For these successful petitioners, an award of reasonable attorneys' fees is mandatory. The second class is the group of petitioners who are not awarded compensation but, nonetheless, acted in good faith in bringing their petition and had a reasonable basis for their petition. For these unsuccessful petitioners, an award of attorneys' fees is discretionary. The final class of petitioners is the group of petitioners who are not awarded compensation and whose claims were not filed in good faith and/or whose petitions lacked a reasonable basis. 42 U.S.C. § 300aa—15(e).[16]

Congress's creation of a class of petitioners who are eligible for attorneys' fees when they have presented reasonable yet unsuccessful claims makes more petitioners eligible for awards of attorneys' fees. This expansion reflects a Congressional intent "to ensure that vaccine injury claimants have readily available a competent bar to prosecute their claims." Cloer v. Sec'y of Health & Human Servs., 675 F.3d 1358, 1362 (Fed. Cir. 2012) (en banc) (quoting Avera v. Sec'y of Health & Human Servs., 515 F.3d 1343, 1352 (Fed. Cir. 2008)).[17]

---

[16] The statute provides:

> In awarding compensation on a petition . . . the special master or court shall also award as part of such compensation an amount to cover ---
>
> (A) reasonable attorneys' fees, and
>
> (B) other costs,
>
> incurred in any proceeding on such petition. If the judgment of the United States Court of Federal Claims on such a petition does not award compensation, the special master or court may award an amount of compensation to cover petitioner's reasonable attorneys' fees and other costs incurred in any proceeding on such petition if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought.

[17] Special masters have implemented Congress's goal of paying attorneys by always awarding attorneys' fees upon a finding of reasonable basis. Although special masters have discretion not to award attorneys' fees to unsuccessful

However, Congress did not authorize awards of attorneys' fees to all unsuccessful petitioners. For unsuccessful petitioners, Congress extended attorneys' fees to only those whose cases were supported by reasonable basis and good faith. This specific limitation necessarily implies that there are some unsuccessful petitioners whose cases are not supported by reasonable basis (and therefore not eligible for attorneys' fees). See Slattery v. United States, 635 F.3d 1298, 1323 (Fed. Cir. 2011) (en banc) (discussing the canon of statutory construction expressio unius est exclusion alterius). As the Federal Circuit explained, "Congress must not have intended that every claimant, whether being compensated or not under the Vaccine Act, collect attorneys fees and costs by merely having an expert state an unsupported opinion." Perreira v. Sec'y of Health & Human Servs., 33 F.3d 1375, 1377 (Fed. Cir. 1994).

The question becomes how to distinguish between the second group of petitioners (those whose unsuccessful claims are supported by a reasonable basis) and the third group of petitioners (those whose unsuccessful claims lack reasonable basis). The distinction depends upon a finding of reasonable basis (or the lack thereof). However, the Vaccine Act does not define "reasonable basis" explicitly.[18]

C. Reasonable Basis

1. Special Masters' Treatment

In the absence of definitive instructions about the meaning of "reasonable basis," special masters have given a variety of interpretations to that term throughout the history of the Vaccine Program, which exceeds 20 years. In the

---

petitioners whose cases are supported by a reasonable basis, special masters have not exercised this discretion to deny attorneys' fees for cases supported by a reasonable basis.

[18] There is a similar absence of guidance from the Federal Circuit and from the Court of Federal Claims in the form of a rule governing proceedings in the Vaccine Program. The only Federal Circuit case to consider a special master's evaluation of whether reasonable basis supported a claim that a vaccine caused an injury is Perreira, 33 F.3d 1375. Perreira, however, did not set a minimum qualification for reasonable basis or otherwise define the term.

early years, some special masters ruled that petitioners satisfied the reasonable basis standard only when they supported their claims with "medical records or medical opinions." See Smith v. Sec'y of Health & Human Servs., No. 91-57V, 1992 WL 210999, at *2 (Cl. Ct. Spec. Mstr. Aug. 13, 1992); Everett v. Sec'y of Health & Human Servs., No. 91-1115V, 1992 WL 35863, at *2 (Cl. Ct. Spec. Mstr. Feb. 7, 1992); Chronister v. Sec'y of Health & Human Servs., No. 89-41V, 1990 WL 293438, at *1 (Cl. Ct. Spec. Mstr. Dec. 4, 1990) (stating "to have a 'reasonable basis' a claim must, at a minimum, be supported by medical records or medical opinion."). These decisions cite section 11(c)(1) and/or section 13(a) in support of this interpretation. Smith, 1992 WL 210999 at *2 n.2; Everett, 1992 WL 35863, at *2; Chronister, 1990 WL 293438, at *1. This interpretation of reasonable basis, as discussed below, is the one the Secretary proposes.

As discussed in McNett v. Sec'y of Health & Human Servs., No. 99-684V, 2011 WL 760314, at *7 (Fed. Cl. Spec. Mstr. Feb. 4, 2011), some cases filed on the eve of the running of a statute of limitations did not follow the standard in which reasonable basis was satisfied only by filing medical records or medical opinions.[19] Special masters reasoned that because attorneys could not investigate the basis for the claims due to the press of the statute of limitations, attorneys were justified in filing incomplete petitions. E.g. Hearrell v. Sec'y of Health & Human Servs., No. 90-1420V, 1993 WL 129645, at *1 (Fed. Cl. Spec. Mstr. April 6, 1993); Peca v. Sec'y of Health & Human Servs., No. 90-122V, 1992 WL 30423, at 1* (Cl. Ct. Spec. Mstr. Feb. 3, 1992) (stating "The reasonable basis requirement for these cases [ones filed just before the statutory deadline] has been liberally construed.") Special masters expected that attorneys who were prevented from investigating the case before filing the petition would analyze the merits expeditiously. Metzger v. Sec'y of Health & Human Servs., No. 90-2955, 1991 WL 278783, at *2 (Fed. Cl. Spec. Mstr. Dec. 10, 1991) (reducing number of hours from 75.9 to 27.9).

Coincident to decisions considering the statute of limitations as part of the process for determining reasonable basis, special masters examined the actions of petitioners' attorneys. This is what happened in Di Roma v. Sec'y of Health &

[19] As enacted originally, the Act required "pre-Act" cases to be filed within 24 months of the Act's effective date. Pub. L. 99-660 § 2116. The effective date is October 1, 1988. Amendola v. Sec'y of Health & Human Servs., 989 F.2d 1180 (Fed. Cir. 1993). Thus, numerous petitions were filed shortly before October 1, 1990. Later, Congress extended the deadline by an additional four months. Pub. L. 101-502 § 5(e). More petitions were filed just before February 1, 1991.

Human Servs., No. 90-3277V, 1993 WL 496981, at *2 (Fed. Cl. Spec. Mstr. Nov. 18, 1993), which is among the most often cited special masters' decisions about reasonable basis. There the (chief) special master stated: "Case law teaches us that basic inquiries are required prior to the filing of any paper under the Act." Di Roma also cited with approval cases such as Smith, which denied fees "where neither the medical records nor an expert's medical opinion is submitted in support of petitioner's claim." Id. Ultimately, Di Roma found no reasonable basis because of a "complete lack of medical and factual support" for the theory based upon an in utero receipt of a vaccination.

For many years, Di Roma was the most elaborate discussion about reasonable basis issued by a special master. For approximately 20 years, special masters found that petitioners had a reasonable basis for bringing unsuccessful claims and awarded attorneys' fees. However, there are relatively few "published" decisions discussing reasonable basis. In many decisions, the special master appended a finding in favor of reasonable basis to the decision denying entitlement. In those cases, the petitioners presented expert testimony, which was insufficient to meet the petitioners' burden of proof regarding entitlement but was accepted as supporting reasonable basis. E.g. Hill v. Sec'y of Health & Human Servs., No. 96-783V, 2001 WL 166639, at *7 (Fed. Cl. Spec. Mstr. Jan. 29, 2001); Lunn v. Sec'y of Health & Human Servs., No. 97-436V, 2000 WL 246237, at *8 n.11 (Fed. Cl. Spec. Mstr. Feb. 17, 2000). In other cases, the reasoning supporting the finding of reasonable basis was not set forth in detail. E.g. Alvis v. Sec'y of Health & Human Servs., No. 90-2874, 1995 WL 120212, at *1 (Fed. Cl. Spec. Mstr. Mar. 3, 1995) (stating that reasonable basis depends "upon the evidence presented. Based on the particular facts of this case, the undersigned finds also that a reasonable basis existed for filing the claim.").

It appears that during this time, special masters construed "reasonable basis" in a way that promoted the payment of attorneys' fees. While some decisions have retrospectively noted that special masters have traditionally construed "reasonable basis" liberally, see Melbourne v. Sec'y of Health & Human Servs., No. 99-694V, 2007 WL 2020084, at *6 (Fed. Cl. Spec. Mstr. June 25, 2007), decisions from this era that demonstrate this principle are difficult to find on commercially available electronic databases. One decision that stands out for its explicit rejection of "very strict, tight-fisted" interpretation of reasonable basis is Jessen v. Sec'y of Health & Human Servs., No. 94-1029V, 1997 WL 48940, at *2-5 (Fed. Cl. Spec. Mstr. Jan. 17, 1997).

The next spate of decisions from special masters addressing reasonable basis started in approximately 2005. Around this time, special masters found that some petitioners who claimed that the hepatitis B vaccine caused them an injury were not entitled to compensation. These entitlement decisions, in turn, prompted decisions about whether to award attorneys' fees to these unsuccessful petitioners. A recurring issue was how the statute of limitations affected the reasonable basis analysis because many cases involving the hepatitis B vaccine were filed shortly before the expiration of the statute of limitations.[20]

Some decisions ruled that the press of statute of limitations did not confer reasonable basis by itself; petitioners were still required to present some evidence to support a finding of reasonable basis. Turpin v. Sec'y of Health & Human Servs., No. 99-564V, 2005 WL 1026714, at *2 (Fed. Cl. Spec. Mstr. Feb. 10, 2005) (finding no reasonable basis when petitioner submitted only one affidavit and no other records). "The Court generally accepts skeletal petitions (those filed sans records). . . . Yet, while such a filing is adequate to stop the running of the statute of limitations, it does not by itself establish a 'reasonable basis' within the meaning of the statute." Brown v. Sec'y of Health & Human Servs., No. 99–593V, 2005 WL 1026713, at *2 (Fed. Cl. Spec. Mstr. March 11, 2005) (finding no reasonable basis when petitioner presented only e-mails between her and her attorney).

In other hepatitis B vaccine cases, the petitioner filed a petition without medical records, filed medical records years later, and, then, could not obtain sufficient evidence to be entitled to compensation. When the special masters adjudicated the fee applications, they held that the statute of limitations effectively altered the reasonable basis analysis. Petitioners were found to have a reasonable basis for filing petitions that contained relatively less evidence than would ordinarily be expected due to the statute of limitations. E.g. Lamar v. Sec'y of Health & Human Servs., No. 99-583V, 2008 WL 3845165, at *3 (Fed. Cl. Spec. Mstr. July 30, 2008) (stating "Given the impending statute of limitations and the lack of contrary authority, I am willing to attribute petitioner's good faith belief to her counsel, based on the severe constraints on his time to investigate this case."); Turner v. Sec'y of Health & Human Servs., No. 99–544V, 2007 WL 4410030, at *6 (Fed. Cl. Spec. Mstr. Nov. 30, 2007) (stating "a filing on the eve of the running of the statute of limitations may be supported by less information than would be

[20] For injuries allegedly caused by the hepatitis B vaccine before August 6, 1997, the deadline for filing claims was August 6, 1999. 63 Fed. Reg. 25777, 25778 (May 11, 1998).

expected if counsel had more time to conduct a prefiling investigation of the factual underpinnings and the medical basis for a vaccine claim"); Hamrick v. Sec'y of Health and Human Servs., No. 99–683V, 2007 WL 4793152, *5 (Fed. Cl. Spec. Mstr. Nov. 19, 2007) (stating "petitioners' attorneys are entitled to the benefit of the doubt when they file a petition just before the statute of limitations expires").

In the context of a hepatitis B case, another special master explained tolerance for the statute of limitations has had the unintended consequence of fostering an atmosphere in which petitioners' attorneys "gam[e] the system." Lamar, 2008 WL 3845165, at *4 n.13. This happens when attorneys, outside of a possible statute of limitations problem, file petitions without investigating whether evidence supports the petitioner's claims.

Within the last year, the amount of litigation over reasonable basis has risen. Two factors appear to be contributing to this increase. First, after the Secretary added the HPV vaccine to the Table, many petitioners filed claims based upon that vaccine. In some cases, petitioners have failed to present evidence (such as an expert report) sufficient to meet their burden of proof, and have been denied compensation. As the litigation over the HPV vaccine progressed, petitioners have sought attorneys' fees in those cases. Second, the Federal Circuit's opinion in Avera, 515 F.3d 1343, permitted petitioners to receive attorneys' fees and costs before the merits phase of the case concluded. Petitioners' attorneys have filed petitions with various degrees of evidentiary support, sought an award of attorneys' fees and costs on an interim basis, and sought to end their representation of the petitioner. E.g. Hiland v. Sec'y of Health & Human Servs., No. 10-491V, 2012 WL 542683 (Fed. Cl. Spec. Mstr. Jan. 31, 2012), motion for review filed (March 1, 2012). Ms. Silva's case contains both factors. Another example of a case in which reasonable basis is disputed is McKellar v. Sec'y of Health & Human Servs., No. 09-841V, 2012 WL 1884703 (Fed. Cl. May 3, 2012).

In sum, special masters have generally have had three overarching interpretations of reasonable basis. Initially, special masters construed the phrase "reasonable basis" in conjunction with sections 11(c) and 13(a). These decisions held that petitioners were required to present a "medical opinion or medical record" in support of their claim to satisfy the reasonable basis standard. Later, in the context of cases filed on the eve of the running of the statute of limitations, special masters have found a reasonable basis to file a petition even without a "medical opinion or medical record." The third concept is that "reasonable basis" should be construed in a way to foster payment of attorneys' fees. Although this

liberal interpretation has been explained infrequently, it has been the dominant interpretation for approximately 20 years.

Importantly, the Federal Circuit has not considered any of these interpretations in a precedential opinion. The Court of Federal Claims, whose opinions are generally considered highly persuasive precedent, has addressed reasonable basis infrequently.[21] Thus, the previously described series of special masters' decisions are the backdrop of the parties' arguments.

2. Parties' Arguments Regarding Meaning of Reasonable Basis

Relying upon the early line of cases, the Secretary advanced a straightforward definition of reasonable basis.[22] The Secretary proposed: "To have a 'reasonable basis,' petitioners' claim must, at a minimum, be supported by medical records or medical opinion." Resp't Opp'n at 12, citing section 13(a)(1). In another brief, the Secretary stated to have a reasonable basis to file the petition, Ms. Silva's "counsel needed to perform the basic inquiries required by an attorney prior to filing of a Vaccine Act petition – to obtain either affidavits or other supporting documentation, such as an expert medical opinion report, as mandated by Section 11(c)(1) of the Act." Resp't Sur-Reply at 2 n.3. Effectively, the Secretary seeks to revitalize an interpretation of reasonable basis that has been used extremely rarely in the last 20 years.[23]

---

[21] In the context of reviewing a special master's 1993 decision finding a lack of reasonable basis, the Court of Federal Claims stated: "Prior to accepting a case, an attorney should be able to distinguish a case that has reasonable underpinnings from one that does not. Rather than waste the court's time and efforts, an attorney should use reasoned judgment in determining whether to accept and pursue a claim." Murphy v. Sec'y of Health & Human Servs., 30 Fed. Cl. 60, 62 (1993), aff'd, 48 F.3d 1236 (Fed. Cir. 1995) (table).

[22] A more recent case with a similar standard is Browning v. Sec'y of Health & Human Servs., No. 07-453V, 2010 WL 4359237, at *8 (Fed. Cl. Spec. Mstr. Nov. 1, 2010) (finding no reasonable basis for filing petition).

[23] The Secretary appears not to press this argument in all cases. See Ryburn v. Sec'y of Health & Human Servs., No. 10-287V, 2012 WL 798644 (Fed. Cl.

Given the shift in Program practice that the Secretary proposes, Ms. Silva would have been well served to respond to the Secretary's arguments. Ms. Silva, however, did not. Ms. Silva did not address any definition the Secretary proposed. In regard to reasonable basis, her briefs did not present any alternative interpretation or definition. Without offering any meaning of the term, her position is that "reasonable basis was present." Pet'r Reply at 13.

III. Analysis

The Secretary's arguments raise questions about how special masters have been addressing reasonable basis for many years. The soundness of this approach is open to reconsideration because the Federal Circuit has never reviewed a special master's finding that reasonable basis was present.[24] Until the Federal Circuit offers precedential guidance, the issue is unsettled because the Federal Circuit's interpretation of the Vaccine Act is definitive. Cf. Avera, 515 F.3d at 1352 (stating, for the first time, that petitioners were entitled to attorneys' fees and costs on an interim basis).

Ms. Silva's case, however, does not need to be resolved on such sweeping grounds. It is sufficient to find that Ms. Silva's case lacked a reasonable basis because her attorneys did not act reasonably. The attorneys essentially did not investigate Ms. Silva's case properly before filing it.

The attorneys' timesheets show a lack of diligence. The law firm received the critical records from Cedar Sinai Hospital, which contain Dr. Niessen's report rejecting the transverse myelitis diagnosis, on September 14, 2009. Remaining records were gathered by November 2009.

There is no evidence that an attorney reviewed any medical records before filing the petition.[25] Ms. Silva's attorneys cannot argue (and do not argue) that

---

Spec. Mstr. Feb. 9, 2012); Roberson v. Sec'y of Health & Human Servs., No. 09-682V, 2012 WL 762101 (Fed. Cl. Spec. Mstr. Jan. 30, 2012).

[24] In Perreira, the Federal Circuit reviewed a special master's finding that reasonable basis was lacking after the petitioner filed an unsupported expert report.

[25] The lack of investigation may have been excused if Ms. Silva's attorney were confronting a looming deadline imposed by the statute of limitations. See

they formed a reasonable (if mistaken) opinion about the compensability of her claim before they filed her petition. Two attorneys spent less than one hour (in total) in preparing and revising the petition in February 2010. By way of contrast, the paralegals spent more than 20 hours preparing a "'stage 2' memo," but this preparation did not start until after the petition was filed.

Ms. Silva's case, therefore, constitutes a case in which the attorneys simply began to analyze her case after they filed her petition. Her attorneys could have reviewed the medical records to see if they possessed documents "demonstrating" the allegations in Ms. Silva's petition, as stated in section 11(c). When the attorneys filed the petition without investigating whether the material, which their paralegals had already gathered, supported her claim that the HPV vaccine caused her to suffer transverse myelitis, the attorneys assumed the risk that there was, in fact, no supporting evidence. When Ms. Silva's attorneys belatedly evaluated her case in December 2010, the attorneys decided that they did not want to maintain the case. If Ms. Silva's attorneys had conducted this evaluation before they filed her petition, it is likely that the attorneys would have found that her case was lacking and would not have filed the petition without further inquiry into the diagnosis as well as causation, saving much time and effort.

Conclusion

Acting through her law firm, Ms. Silva filed a petition alleging that the HPV vaccine caused her to suffer a demyelinating injury, more specifically, transverse myelitis. Because Ms. Silva's attorneys failed to conduct a thorough pre-filing investigation of the case, they did not discover that there was no documentation supporting her claim that the HPV vaccine caused her any injury. Although the attorneys reviewed the case after it was filed, the continued litigation has not cured the defect that has existed since the case was filed.

Without a showing of reasonable basis, Ms. Silva cannot be awarded attorneys' fees and costs. The Clerk's Office is instructed to enter judgment denying Ms. Silva's request for attorneys' fees and costs unless a motion for review is filed.

Hamrick, 2007 WL 4793152, at *7; Turner, 2007 WL 4410030, at *6 (quoting Di Roma); Di Roma, 1993 WL 496981; Hearrell, 1993 WL 129645, at *1. But, Ms. Silva's attorneys do not claim that the statute of limitations contributed to how they processed her case.

IT IS SO ORDERED.

S/Christian J. Moran
Christian J. Moran
Special Master