

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREW M. and DEIRDRE M., et al. : CIVIL ACTION
: :
v. : :
: :
DELAWARE CO. OFFICE OF MENTAL : :
HEALTH AND MENTAL RETARDATION, : :
et al. : NO. 03-6134

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: May 25, 2005

I. Introduction

After a non-jury trial held in this IDEA and Rehabilitation Act case, held between January 10 and 12, 2005, I entered judgment on April 7, 2005, in favor of Plaintiffs in the amount of \$3,000.00, and directed Plaintiffs' counsel to file a petition for attorney's fees and costs, as permitted by the Rehabilitation Act at 29 U.S.C. § 794a.

Counsel has now filed a petition seeking a total of \$126,725.50. Defendants have opposed this petition, and suggest that a reasonable amount would be \$31,681.37. For the reasons explained below, I will award Plaintiffs' counsel \$53,588.25.

II. Factual Background

This case centered around Delaware County's failure to prescribe an intensive two-week camp in an alternative language system known as PECS, as part of the special services for Andrew and Dierdre M.'s twin sons, known here as R.M. and P.M.

At various times, this case included other claims. Indeed, at some points, it was not clear exactly what arguments Plaintiffs were putting forth. However, at the time cross-motions for summary judgment were filed, the Plaintiffs at least claimed that (1) both R.M. and P.M. should

have been prescribed PECS camp; and (2) both R.M. and P.M. were entitled to compensation for 25 unused hours of PECS services.

In my decision on the cross-motions for summary judgment, I dismissed Plaintiffs' claims regarding the 25 unused service hours, on the basis that these claims had not been exhausted at the administrative level. Moreover, as noted above, in my decision following trial, I decided that only P.M. had been entitled to PECS camp. I decided against Plaintiffs on the claim regarding R.M.

II. The Relevant Law

The starting point for determining attorneys' fees is the number of hours expended multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). This calculation results in the "lodestar," which is presumptively correct but which may be adjusted should the court find such adjustment appropriate. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). If, for example, a plaintiff has achieved only partial or limited success, the lodestar may constitute an excessive award. Hensley, supra, at 436.

III. Discussion

In her petition, counsel for Plaintiff asserts that she spent 462.31 hours on this case, in the administrative hearing required by the IDEA, and before this Court. At a fee of \$300 per hour, she claims a lodestar of \$138,693.00. Counsel claims that she was two-thirds successful at trial, because she succeeded in showing (1) the existence of systemic problems which resulted in a denial of services; and (2) that the PECS camp was a necessary service for P.M. She claims she failed only in proving that the PECS summer program was a necessary service for R.M. She therefore claims a \$92,462.00 fee.

Delaware County has not challenged the attorney's hourly fee or the number of hours expended.¹ Therefore, they are accepted. However, I will reduce the total fee further than Plaintiffs' counsel has suggested, based on what I see as the degree of Plaintiffs' success at trial.

I do not agree that Plaintiffs were 2/3 successful. The systemic problems that counsel showed at trial were a part of the proof that P.M. was wrongly denied a necessary service. This constitutes one successful issue, not two. Based on the issues, as I have construed them above, counsel was no more than one-fourth successful. This is a liberal assessment, since Plaintiffs' degree of success would seem lower if certain broader theories regarding the workings of Delaware County, which were set forth in pre-trial submissions but excluded from trial, were considered. In accordance with this assessment of Plaintiffs' level of success, I will award counsel a fee of \$34,673.25, which is one fourth of \$138,693.00.

Two paralegals also worked on the case. The first spent 176.1 hours on it, primarily at the administrative level. At a fee of \$100 per hour, costs for his work would be \$17,610.00. The second paralegal spent 143.88 hours on this matter. Counsel claims a reasonable charge for his work is \$75.00 per hour, for a total of \$10,791.00 in costs.

I will reduce the charges for paralegal work by three-fourths, as I have done with counsel fees. Counsel maintains that their charges should only be reduced by one half, since they mainly worked on the administrative hearing, at which was argued only the issue of whether the twins

¹More precisely, Delaware County asks that Plaintiffs' counsel be required to submit time records so that the hours expended may be scrutinized, but only as an alternative, if this Court declines to reduce the overall award based on Plaintiffs' degree of success. Since I am reducing the award on this basis, I will not ask for time records. This is consistent with the Supreme Court's direction in Hensley that a district court "may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." 461 U.S. at 437.

would receive PECS camp. Since P.M. has been found entitled to PECS camp but R.M. has not, counsel claims the paralegals were half-successful. However, the degree of success at trial is at issue here, not that at the administrative level. The paralegal costs are recoverable only as part of the costs of the District Court action. Therefore, the costs will be reimbursed at a rate proportionate with the value of the paralegals' work to the case as a whole. For this reason, I will award \$4,402.50 in costs for the first paralegal, and \$2,697.75 for the second.

I will reduce the requested award for miscellaneous costs by three fourths, for the same reason. According to counsel, \$11,011.00 was spent for "deposition and trial transcripts, filing fees, postage, witness fees and telephone expenses." I will award \$2,752.75.

I will however, award the entire requested amount for expert fees. All testimony heard at trial was relevant to the issue upon which Plaintiffs were successful, and, indeed, the expert testimony was instrumental in Plaintiffs' success. One expert rendered a report pertaining to both twins, but counsel for Plaintiffs has already halved her fee. I will award \$2,600.00 in fees for Steven Kossor; \$4,537.00 for Dr. Thurman; and \$1,925.00 for Ellen Schwartz. Expert fees therefore total \$9,062.00.

III. Conclusion

For the reasons discussed above, I now enter the following:

ORDER

AND NOW, this 25th day of May, 2005, upon consideration of Plaintiffs' Motion for Attorney Fees and Associated Expenses, docketed in this matter as Document No. 38, and Defendants' Response thereto, it is ORDERED that Plaintiff's motion is GRANTED.

Defendants shall pay the Public Interest Law Center fifty-three thousand, five hundred and eighty-eight dollars and twenty-five cents (\$53,588.25) within thirty days of the entry of this Order.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE