

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

CHERYL LOMBARDI,	*	
	*	
Petitioner,	*	No. 99-523V
	*	Special Master Christian J. Moran
	*	
v.	*	Filed: June 22, 2012
	*	
SECRETARY OF HEALTH	*	Attorneys' fees and costs; award
AND HUMAN SERVICES,	*	in the amount to which
	*	respondent does not object.
Respondent.	*	

UNPUBLISHED DECISION¹

Clifford J. Shoemaker, Shoemaker and Associates, Vienna, VA, for Petitioner;
Heather L. Pearlman, U.S. Department of Justice, Washington, D.C., for Respondent.

Petitioner Cheryl Lombardi filed her initial application for attorneys' fees and costs on June 4, 2012. After discussions between the parties, petitioner filed an amended application on June 20, 2012. Ms. Lombardi is awarded the amount to which respondent has not objected.

Ms. Lombardi claimed that the hepatitis B vaccines caused her to develop chronic fatigue syndrome, lupus, and/or transverse myelitis. See Petition, filed July 28, 1999. A decision, filed January 29, 2010, found that petitioner was not entitled to compensation. Jane Doe 60 v. Sec'y of Health & Human Servs., No. [REDACTED], 2010 WL 1506010 (Fed. Cl. Spec. Mstr. Jan. 29, 2010). A judge found that the decision was not arbitrary. Jane Doe 60 v. Sec'y of Health & Human Servs., 94 Fed. Cl. 597 (2010). The Federal Circuit affirmed the Court's judgment. Lombardi v. Sec'y of Health & Human Servs., 656 F.3d 1343 (Fed. Cir. 2011).

Even though compensation was denied, a petitioner who brings her petition in good faith and who has a reasonable basis for the petition may be awarded attorneys' fees and costs. See 42 U.S.C. § 300aa-15(e)(1). Ms. Lombardi presented reports from two experts, opining that the

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 decision 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.

hepatitis B vaccines harmed her. See exhibit 86 (Dr. Shoenfeld) and exhibit 44 (Dr. Tornatore). Thus, because petitioner's counsel acted in good faith and there was a reasonable basis for proceeding, petitioner is eligible for an award of attorneys' fees and costs. Respondent does not contend that petitioner failed to satisfy these criteria.

Ms. Lombardi seeks **\$223,356.86** in attorneys' fees and in costs for petitioner's counsel. Additionally, Ms. Lombardi filed a statement of costs in compliance with General Order No. 9, stating that she incurred **\$1,643.14** while pursuing this claim. Respondent stated that she had no objection to this application for attorneys' fees and costs.

After reviewing the request, the court awards the following:

1. **A lump sum payment of \$223,356.86 in the form of a check payable to petitioner's attorney, Clifford J. Shoemaker, of the law firm Shoemaker & Associates, and petitioner, Cheryl Lombardi, for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e).**
2. **A lump sum payment of \$1,643.14 in the form of a check payable to petitioner, Cheryl Lombardi.**

The court thanks the parties for their cooperative efforts in resolving this matter.

The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.