

OFFICE OF THE SPECIAL MASTERS

No. 91-0521V

(Filed on: August 21, 1998)

EDDIE LANGFORD and VIRGINIA *
LANGFORD, Parents and Next *
Friends of EDDIE MAURICE LANGFORD, *

Petitioners, * **TO BE PUBLISHED**

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

Robert T. Moxley, Cheyenne, WY, for petitioners.

Karen P. Hewitt, Washington, DC, for respondent.

DECISION AND ORDER

MILLMAN, Special Master.

Statement of the Case

The above-captioned matter was part of the cases pending during the undersigned's Omnibus TS hearing dated October 8-11, 1996 and June 3-4, 1997. Subsequent to my decision in the Omnibus case, dated September 15, 1997,⁽¹⁾ the court determined what course to follow in this individual case.

Respondent challenges whether Eddie Maurice Langford (hereinafter "Maurice") experienced the onset of his seizures within Table time of his DPT vaccination. The court held a hearing on July 17, 1998 to determine this issue. Testifying for petitioners were Eddie Langford and Virginia Langford. Respondent did not call any witnesses.

Facts

Maurice was born on November 14, 1975. Med. recs. at P. Ex. 8, p. 1. He received his first DPT vaccination on February 17, 1976 when he was three months old. Med. recs. at p. 1.

In a medical record dated March 1, 1976, the history given reflects that Maurice began seizing on February 19, 1976.⁽²⁾ Med. recs. at p. 33. These seizures consisted of jerking of the legs. Id. During the first seizure, he had some transient swelling of his right hand and right foot. Id. Eventually, the seizures increased in both length and frequency and included deviation of Maurice's head and eyes. Id. During the episodes, however, he remained alert, was afebrile, and did not have focal neurological signs. Id.

A medical record dated March 17, 1996 reflects the onset of Maurice's seizures as being one week after his first DPT. Med. recs. at P. Ex. 9, p. 1.

On August 6, 1997, Maurice had an MRI. R. Ex. U. The MRI reflected that Maurice has microcephaly with a thick skull and larger than normal lateral ventricles. Id. His brain sulci appear prominent and his cerebral white matter appears reduced bilaterally. Id. Dr. Robert A. Zimmerman interpreted the MRI,

concluding that Maurice has more than TS.⁽³⁾ Id. Dr. Zimmerman noted that Maurice's microcephaly and his abnormal signal within the white and grey matter may be due to a prior brain injury, such as hypoxic ischemia. Id.

Testimony

Eddie Langford testified first for petitioners. Mr. Langford stated that Maurice was born in a military hospital in Germany on November 14, 1975. Tr. at 5, 12. After receiving his first DPT on February 17, 1976, Maurice did not have a fever. Tr. at 18, 24. However, he cried inconsolably and he would not eat. Tr. at 19-22. That evening, Maurice smiled. Tr. at 19. Mrs. Langford believed that this was a seizure. Tr. at 19. Mr. Langford, however, thought Maurice was experiencing gas. Id.

On February 18, 1976, Mr. Langford first observed Maurice have a smiling episode. Tr. at 23. During this episode, Maurice's eyes seemed fixated. Tr. at 26. This would last for approximately three to five seconds. Id. Mr. Langford testified that Maurice appeared normal except for the smiling episodes. Tr. at 24.

By February 19, 1976, Maurice was having grand mal seizures. Tr. at 27. During these episodes, his body would become rigid and his mouth would open. Id. This would last for approximately five to ten seconds. Id.

The Langfords took Maurice to the clinic at Baumholder, Germany, on February 19 or 20, 1976, and to Landstauhl Hospital on February 23, 1976. Tr. at 29. Maurice was then transferred to Walter Reed Hospital. Tr. at 35-36. He stayed at Walter Reed for one and one-half months. Tr. at 36. Thereafter, his seizures worsened, becoming lengthier and more frequent Tr. at 39. His dosage of anti-convulsants was increased. Tr. at 40.

Today, Maurice lives in a group home and has the IQ of an infant. Tr. At 44. He is in a wheelchair and does not feed himself. Id. He has a gastrointestinal tube. Id. Maurice has three to four grand mal seizures per day. Tr. at 47-48.

Virginia Langford testified next for petitioners. Mrs. Langford stated that Maurice would not eat after his DPT.⁽⁴⁾ Tr. at 87-88. He cried inconsolably and screamed as if in pain. Tr. at 88. He also experienced an episode which consisted of a little smile and a stare. Tr. at 90.

On February 18, 1976, Maurice experienced a more severe episode, causing Mrs. Langford to become concerned. Tr. at 91-92. Maurice did not have a fever and he ate normally. Id.

At his best, Maurice has between two to three seizures daily. Tr. at 97. At his worst, however, he has had between ten to fifteen seizures per day. Tr. at 97. Mrs. Langford never associated his seizures with DPT. Tr. at 85.

Discussion

If the onset of Maurice's infantile spasms occurred within Table time of his DPT, petitioners benefit from the statutory presumption that DPT caused the seizures. It does not, however, automatically prove that petitioners prevail on a theory of on-Table significant aggravation.

Based on both the earliest medical record and the testimony of Mr. and Mrs. Langford, the court holds that Maurice's first seizure occurred within Table time of his DPT vaccination.⁽⁵⁾

As the court held in its Omnibus TS Decision, if a vaccinee with TS has a seizure as his or her sole symptom following DPT vaccination, without any indicia of a vaccine reaction, e.g., fever, screaming, inconsolable crying, altered affect, insomnia, anorexia, or excessive irritability, the court will hold that: (1) TS is the factor unrelated to the vaccination that caused his seizures, and (2) petitioners do not prevail on a theory that DPT significantly aggravated the vaccinee's TS. See Barnes et al., *supra*, at *32-33.

After DPT, Maurice cried, and he would not eat. The court needs expert medical reports to determine the significance vel non of these symptoms. Moreover, the court needs expert medical reports to determine Maurice's brain anomalies that indicate severe problems outside of TS.

Conclusion

The court shall hold a telephonic status conference with the parties to determine the timing of their filing of expert medical

reports. The parties shall contact the court no later than Friday, September 11, 1998 to schedule this status conference.

IS SO ORDERED.

DATED: Laura D. Millman

Special Master

1. Barnes et al. v. Secretary, HHS, 1997 WL 620115 (Fed. Cl. Spec. Mstr. Sept. 15, 1997). The holding of the Barnes decision is discussed infra.

2. The record further notes that he was first seen by a doctor on February 23, 1976. Med. recs. at p. 33.

3. Petitioners' counsel suggested at the hearing that, should petitioners prevail, apportionment of damages may be appropriate because part of Maurice's brain anomaly has nothing to do with TS.

4. Maurice normally ate every three hours. Tr. at 87-88.

5. The court is aware that, in their affidavit, petitioners gave an onset as the day after the DPT, rather than the day of the vaccination. However, this is immaterial in the context of a three-day window. The court is further aware that a later record puts onset at one week. Since this record is not the earliest record, which does indeed support the parents' testimony, although it mentions onset at two days post-vaccination rather than the day of vaccination, the court chooses to accept that the evidence predominantly favors a conclusion of on-Table onset. Moreover, petitioners were extremely credible and the court believes them.