

the National Vaccine Injury Compensation Program (the Program).² Petitioner alleges that Isaiah died on July 8, 2008 as a result of the vaccines he received the previous day. Petitioner asserts that the administered Pediarix vaccine—which contained a combination of diphtheria, hepatitis B, pertussis (acellular), polio, and tetanus vaccines—caused a decrease in Isaiah’s brain function, which ultimately led to his death. Pet. at 17, 37. Alternatively, petitioner claims that Isaiah’s death was caused by one or more of the toxins contained in the vaccines Isaiah received on July 7, 2008. Pet. at 37. That day, Isaiah received a Pediarix vaccine, Haemophilus influenzae type B (HiB) vaccine, and Pneumococcal Conjugate Vaccine (PCV). Pet. at 26.

In support of her allegations of vaccine-related injury, petitioner filed the following documents: (1) affidavits from petitioner, Alisa Barrett (Isaiah’s grandmother), and Kevin Calixte (petitioner’s former boyfriend), Pet’r’s Ex. 1, 25, 24; (2) petitioner’s prenatal records and Isaiah’s earliest pediatric records from his physician in Arizona, Pet’r’s Ex. 4; (3) Isaiah’s later pediatric records, including the Vaccine Adverse Event Report, prepared by Isaiah’s pediatrician in New York, Pet’r’s Ex. 3; (4) hospital records dated the same day Isaiah died, Pet’r’s Ex. 5; (5) a medical examiner’s report, Pet’r’s Ex. 2; (6) a police report, Pet’r’s Ex. 6; and (7) medical literature supporting petitioner’s claim, Pet’r’s Ex. 7-19.

The undersigned conducted a fact hearing in Washington, D.C. on March 23, 2012 to resolve certain factual issues that emerged during the development of this case. At the fact hearing, petitioner and her former boyfriend testified regarding the vaccinations Isaiah received on July 7, 2008, Isaiah’s well-being after receipt of the vaccines, and the circumstances surrounding his death the following day.

I. DISCUSSION

A. The Documentary Record

Isaiah Steinberg was born on January 8, 2008 at the regional medical center in Chandler, Arizona. At birth, he received a Hepatitis B vaccination. Pet’r’s Ex. 3 at Bate Stamp (BS) 30, 31, 39. He was discharged from the hospital two days after his birth on January 10, 2008, as a well infant. Pet’r’s Ex. 4 at BS 58, 87.

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter “Vaccine Act” or “the Act”). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

Two months later, on March 21, 2008, Isaiah received another set of immunizations. Pet'r's Ex. 3 at BS 31. Petitioner and her son moved to Shirley, New York shortly thereafter.

After the move, Isaiah received routine pediatric care at Stony Brook University Medical Center in New York. Pet'r's Ex. 3. On May 20, 2008, Isaiah received additional immunizations with no reported adverse reaction. Pet'r's Ex. 3 at BS 20-26. During his well child exams in April, May and June of 2008, it was noted that Isaiah exhibited normal growth and development, notwithstanding a surgery to correct a hernia he had developed. Id.

The vaccines at issue in this case were administered to Isaiah during a well baby examination on July 7, 2008. Pet'r's Ex. 3 at BS 14, 25. His appointment was scheduled for 3:00 p.m. Pet'r's Ex. 3 at BS 14, 25. During the office visit, Isaiah received the Pediarix, HiB, and PCV vaccines. Id. at 24-25. After his appointment, petitioner took Isaiah to visit her mother for several hours. Petitioner brought Isaiah back home later that night. Pet'r's Ex. 25. At home, Isaiah fell asleep at approximately 10:00 p.m. Pet'r's Ex. 6 at BS 292. He awakened the next morning, July 8, 2008, at 6:00 a.m. Id. Petitioner cared for Isaiah until approximately 9:00 a.m. Id.

Kevin Calixte, who lived with petitioner at that time, also cared for Isaiah that day. Mr. Calixte tended to Isaiah from approximately 9:00 a.m. until noon. Pet'r's Ex. 6 at 296. Petitioner slept during this time. Id. Later that afternoon, at approximately 3:30 p.m., Ms. Steinberg placed Isaiah on his stomach, on a queen sized bed, for a nap. Pet'r's Ex. 6 at BS 292. A blue comforter covered the bed. Id. at 293. The pillows on the bed were arranged to prevent Isaiah from falling. Pet'r's Ex. 6 at BS 292, 297, 325, 338. While Isaiah napped, petitioner and Mr. Calixte napped in the next bedroom. Pet'r's Ex. 6 at BS 292.

Less than an hour after Ms. Steinberg put Isaiah down for a nap, Mr. Calixte found him unresponsive. Pet'r's Ex. 6. Emergency medical services were summoned to the home at 4:44 p.m. Pet. Ex. 6 at BS 283. When the ambulance arrived at 4:51 p.m., emergency medical technicians (EMTs) found Isaiah in cardiac arrest. Id. At 4:53 p.m., Isaiah was transported by ambulance to Brookhaven Memorial Hospital Medical Center. Repeated resuscitative efforts by hospital personnel were unsuccessful. Pet'r's Ex. 5 at BS 285. Isaiah was pronounced dead at 7:18 p.m. on July 8, 2008. Id.

The Suffolk County Police Department investigated Isaiah's death and took a sworn written statement from Mr. Calixte about the events preceding Isaiah's demise. Pet'r's Ex. 6 at BS 296-98. In his report, the detective noted that the surface of the bed that Isaiah slept on was "very soft" and had "a thick[,] soft

comforter on top of a pillow top style mattress.” Pet. Ex. 6 at 293. Based on the findings of the Suffolk County Medical Examiner’s office, the detective concluded that Isaiah’s death was non-criminal. Id. at BS 294.

The medical examiner performed an autopsy on July 9, 2008. Pet’r’s Ex. 2 at BS 6. The examiner ruled that the cause of death was “sudden unexpected infant death.” Pet’r’s Ex. 2 at BS 14.

Isaiah’s pediatrician completed a Vaccine Adverse Event Reporting System (VAERS) report that same day. Pet’r’s Ex. 2 at BS 14. As reflected in the VAERS report, Isaiah was “fine” after receiving his vaccinations on the afternoon of July 8, 2008. Pet’r’s Ex. 3 at BS 14. Also documented in the VAERS was Isaiah’s receipt of three injections in one or both legs. Id. The report further indicated that Isaiah “had [a] nap with mom,” and “was unresponsive” when mom awakened. Id.

B. The Witnesses’ Testimony

Petitioner and Kevin Calixte testified during the fact hearing held on March 23, 2012. Petitioner testified first. Mr. Calixte remained sequestered during her testimony. Both petitioner and Mr. Calixte described Isaiah’s state of being after his receipt of the vaccines at issue and before his death.

Petitioner’s testimony conflicted in significant and material respects from the documentary records and her own affidavit. Her explicit and detailed recall of various conversations and a number of particulars about Isaiah’s day before Mr. Calixte found him unresponsive seemed—to the undersigned—contrived. Ms. Steinberg’s demeanor and testimonial content strongly suggested that she was embellishing the factual account she provided as she spoke. For these reasons, the undersigned did not find the uncorroborated aspects of Ms. Steinberg’s testimony credible.

In contrast, Mr. Calixte’s testimony was largely consistent with the documentary record, the police report, and his affidavit. He spoke clearly about the details he could remember, and he declined to speculate about what he could not recall. The undersigned found his testimony very credible.

1. Ms. Steinberg

Petitioner testified that Isaiah was healthy at his birth on January 8, 2008. Tr. at 8. Other than the surgical repair of a hernia at one month old, Isaiah had no notable medical issues. Id. at 13, 15-16. Petitioner testified that she followed post-surgical procedures prescribed for Isaiah, she attended his well visits, and she maintained his vaccination schedule. Id. at 17-18.

On July 7, 2008, the morning that Isaiah received the vaccinations at issue, he appeared to be a happy and playful baby. Id. at 18. Petitioner completed her normal morning routine, which included changing Isaiah, giving him a bottle, and sitting him in a swinging chair to allow him to watch television. Id. at 19. At approximately 3:00 p.m., petitioner arrived with Isaiah at the pediatrician's office for his scheduled appointment. Petitioner testified that she waited nearly two hours to see the pediatrician and on arrival, the doctor introduced a student who was observing that day. Id. at 22.

Concerned about Isaiah's receipt of another round of vaccinations, only a month after receiving other vaccines, petitioner drew her worry to the attention of the pediatrician. Id. at 23. The pediatrician assured petitioner that Isaiah was "fine" and advised petitioner to watch for a fever or rash in the days following vaccination. Id. After that brief conversation, a nurse administered the vaccines into Isaiah's legs and his left arm. Id. at 24. Petitioner testified Isaiah received five needles. Id.

According to petitioner, Isaiah began screaming and crying as the nurse administered the vaccines. Id. at 25. He accepted his pacifier upon leaving the pediatrician's office to head to his grandmother's home. Id. at 27. But, he cried the entire ten minute ride. Id. at 27-28. Isaiah continued to cry after arriving at his grandmother's home. Tr. at 31. Petitioner testified that she was not sure whether the vaccinations, Isaiah's teething, or a combination of both factors, were to blame for his crankiness. Id. at 30. Petitioner observed that Isaiah stopped crying for some period of time to watch cartoons. Id. at 33-34.

Petitioner visited with her mother for a three to four hour period, before she returned home. Id. at 34. Once she returned home, Isaiah continued to cry and scream. Id. at 35-36. He fell asleep at approximately 10:00 p.m. in bed with petitioner. Id. at 36, 78. Isaiah awakened in the middle of the night to take a bottle and then fell back to sleep. Id. at 36-37. Isaiah awakened the next morning at approximately 7:00 a.m. Id. at 37. When respondent's counsel inquired about petitioner's assertion in her affidavit that Isaiah seemed "fine" when he woke up the next morning, petitioner responded that Isaiah was "fine" and had exhibited normal behavior, but only for a short while. Id. at 79. Petitioner added that she cared for Isaiah after he awakened by giving him Tylenol for his teething. Id. at 38, 42.

Between 9:00 and 10:00 that morning, Mr. Calixte came home from work. Tr. at 40. Mr. Calixte assumed care of Isaiah while petitioner took a nap. Id. at 45. According to petitioner, Isaiah was crying when she awakened from her nap between 11:00 a.m. and noon. Id. While petitioner slept, Mr. Calixte played with Isaiah and gave him more Tylenol to help with his teething. Id. Mr. Calixte assured petitioner that Isaiah had not cried during the entirety of her nap. Id.

Petitioner gave Isaiah a bottle once she resumed his care. Id. at 45, 80. Isaiah moved about in his walker and played with his toys while petitioner spent about fifteen minutes giving Mr. Calixte a haircut. Id. at 48. While cutting Mr. Calixte's hair, petitioner paused to place Isaiah in his playpen. She recalled that Isaiah began to cry once he was placed in the playpen. Id. at 49.

Isaiah fell asleep on petitioner's chest around 4:00 p.m. after drinking about an ounce or so from his bottle. Id. at 52, 81-84. On cross examination, respondent counsel pointed out that petitioner's testimony was inconsistent with the contemporaneous statement she gave to the police. Id. at 84. At that time, petitioner reported that Isaiah had taken two to three ounces of formula. Id.

Petitioner testified that she held Isaiah on her chest for about ten minutes before she placed him on the bed in the spare bedroom. Id. at 53. The bed in the spare bedroom sat in the northeast corner of the room. Id. at 54. A blue comforter covered the bed and all the pillows, but two. Id. at 54. Petitioner placed the two exposed pillows on top of the comforter, arranging one at the top of the bed and the other at the bottom. Id. at 57. She laid Isaiah horizontally on his stomach, positioned between the two pillows. Id. at 58-61. Because it was a summer day, the air conditioning, a ceiling fan, and a standing fan were running to keep the house cool. Id. at 55.

After putting Isaiah down for a nap, petitioner joined Mr. Calixte in the bedroom across the hall. Tr. at 64. They both fell asleep and were awakened by the sound of a slamming door. Id. at 65. Petitioner asked Mr. Calixte to check on Isaiah because the baby had not cried when the door slammed. Id. Mr. Calixte went to check on Isaiah after first going to the bathroom. Id. Subsequent to checking on Isaiah, Mr. Calixte reported to Ms. Steinberg that Isaiah was not breathing. Id. at 66. Petitioner immediately ran to grab Isaiah. Id. She carried him into the living room to begin administering CPR on the couch and instructed Mr. Calixte to call emergency medical services. Id. The EMTs arrived approximately five minutes after the call. Id. at 83.

Petitioner described what she saw when she first entered the room where Isaiah had been napping. Isaiah was no longer in the middle of the bed where she had placed him initially. Id. Rather, he was on his side with his back against the wall. Id. One of the arranged pillows was covering the top part of his head, but his nose and mouth were still visible. Id. His lips were "kind of blue." Id. Petitioner did not believe Isaiah crawled into the position in which he was found because he was not yet crawling. Id. But, according to petitioner, Isaiah was able to inch along, and he was able to grab onto objects, like a pillow. Id.

Petitioner's mother called the pediatrician after Isaiah's death. Id. at 84. The pediatrician filed a VAERS report. Id. at 84-85. Respondent's counsel drew

to petitioner's attention on cross-examination that according to the VAERS report, petitioner's mother explained that Isaiah had been fine until the afternoon of July 8. Id. at 85. Petitioner responded that her mother would not have given such a report "when she [had seen] how he was right after the vaccines." Id.

The undersigned found certain aspects of Ms. Steinberg's testimony difficult to credit because the portions of her testimonial account contradicted the documentary record and were inconsistent with her earlier filed affidavit. Her careful efforts to provide a detailed account of events appeared to venture well beyond the realm of her personal recollection. Accordingly, the undersigned assigned greater weight to the aspects of petitioner's testimony that were consistent with the documentary record. Substantially less weight is accorded to those portions of petitioner's testimony that starkly conflicted with the contemporaneous records.

2. Mr. Calixte

Mr. Calixte is petitioner's former boyfriend. Tr. at 89. Petitioner and Mr. Calixte met in Arizona, prior to Isaiah's birth. Id. at 89. Mr. Calixte testified he was supportive of petitioner's pregnancy—accompanying her on pre-natal visits and pediatric visits. Id. Mr. Calixte was not present at any pediatric visits for Isaiah's immunizations. Nor did he see Isaiah on July 7, 2008, the day Isaiah received the vaccines at issue. Id. at 90, 92. However, Mr. Calixte did spend time with Isaiah the day after Isaiah received his vaccinations. Id. at 93.

Mr. Calixte described a typical day with Isaiah. Id. at 92. He would come home from work around 7:00 in the morning, and if Isaiah were awake at that time, he would either watch TV with Isaiah or take him for a walk. Id. Mr. Calixte and Isaiah would take a nap after their walk. Id.

On July 8, the day after Isaiah received his vaccinations, Mr. Calixte came home from work around 7:30 in the morning. Id. He found Isaiah napping with petitioner. Id. at 94, 103. Petitioner awakened and gave Isaiah to Mr. Calixte. Id. As was his habit, Mr. Calixte took Isaiah for a walk. Id. When Mr. Calixte returned from the walk, he put Isaiah in the swinging chair and took a nap on the couch beside him. Id. Isaiah and Mr. Calixte awakened from their naps at 9:00 a.m. Id.

When asked to describe Isaiah's state of being that day, Mr. Calixte testified that Isaiah "seemed normal." Id. Around noon, petitioner gave Mr. Calixte a haircut in the kitchen, id. at 104, while Isaiah moved around in his walker. Id. at 95. Later that afternoon, Isaiah began to get cranky at the time he usually napped. Id. at 105. According to Mr. Calixte, petitioner took Isaiah out of his walker and laid him down for a nap, after she finished Mr. Calixte's haircut.

Id. Mr. Calixte then accompanied petitioner to the spare bedroom where he and petitioner also took a nap. Id. at 96.

Mr. Calixte testified he “woke up on his own.” Id. He checked on Isaiah on his way to the bathroom and found Isaiah lying where petitioner had placed him, horizontally in the middle of bed. Id. at 96, 97. Isaiah seemed fine when Mr. Calixte first checked on him. Id. at 96. As he returned from the bathroom, Mr. Calixte checked on Isaiah again. Id. at 96, 106. By this time, Isaiah had moved to a corner of the bed and had his back against the wall. Id. at 98. There was a pillow over the top portion of his head; Mr. Calixte could still see part of his face. Id. at 98, 108. According to Mr. Calixte, Isaiah was not breathing and there was blood under his nose and on his upper lip. Id. at 99. Isaiah’s lips were purple and blue. Id. at 109.

Mr. Calixte did not touch Isaiah. Id. 99-101. Instead, he immediately returned to the spare bedroom to awaken petitioner. Id. Petitioner started CPR on Isaiah while Mr. Calixte called emergency medical services. Id. at 100.

The undersigned found Mr. Calixte’s testimony credible and mostly consistent with the documentary record.

C. Contested Facts

Petitioner and respondent disagree on several facts regarding Isaiah’s state on July 8, 2008, the day after Isaiah received his immunizations. Most importantly, the parties disagree on the extent of Isaiah’s crankiness and fussiness between the time he received his immunizations on July 7, and the time he went into cardiac arrest on the afternoon of July 8. The parties’ disagreement stems from the differences between the documentary record and petitioner’s testimonial account of the events surrounding Isaiah’s death. The contested facts are briefly summarized below.

Petitioner asserts Isaiah received five vaccinations around 5:00 p.m. on July 7, 2008, Tr. at 24, and that “his reaction to the vaccinations was immediate and unrelenting.” Pet. Proposed Finding of Fact at ¶ 6. Upon receipt of the vaccines at issue here, Isaiah began to scream and became fussy for several hours until he fell asleep at 10:00 p.m. Tr. at 25-36. When Isaiah awakened the next morning, around 7:00 a.m., he resumed his cranky and fussy behavior. Id. at 79; Pet. Proposed Finding of Fact at ¶ 9. He did not take as much infant formula as he regularly would. Id. at 41-44.

The day after Isaiah’s vaccinations, petitioner awakened from her nap around noon and found Isaiah crying and cranky. Id. Petitioner gave Mr. Calixte

a haircut while Isaiah wiggled in his walker and played with his toys, id. at 48; Isaiah became cranky during that time. Id. at 49.

Thereafter, petitioner put Isaiah down for a nap in the spare bedroom. Id. at 52. Isaiah was found unresponsive by Mr. Calixte less than an hour later. Id. at 65. Petitioner began resuscitative efforts, which the EMTs continued when they arrived at petitioner's home. Id. at 66-83.

Respondent challenges petitioner's testimony pertaining to Isaiah behavior following his vaccinations because the documentary record—containing observations more contemporaneous to the events in question—does not corroborate petitioner's later-given testimony about the degree and duration of Isaiah's fussiness.

Respondent asserts that Isaiah received three vaccinations instead of five, noting that Pediarix is a combined vaccine. See Resp't Proposed Findings of Fact ¶ 3. Respondent further asserts that the record does not support petitioner's contention that Isaiah suffered an "immediate and unrelenting" reaction to the received vaccinations on July 7. Resp. to Pet'r's. Finding of Fact at 10. Rather, contemporaneous records, such as the VAERS report, hospital records, and police report, contradict petitioner's testimony that Isaiah had a noticeably adverse reaction to the administered vaccines. Id. Respondent adds that Mr. Calixte did not tell the detective investigating Isaiah's death that Isaiah was inconsolable on July 7. Id.

Respondent argues that Ms. Steinberg's testimony was itself contradictory. While she testified that Isaiah was unrelenting and inconsolable on July 7, she also testified that he watched cartoons and engaged in play that same day. Tr. at 76; Resp. to Pet'r's. Finding of Fact at 11. Although petitioner reported to the detective that Isaiah received vaccinations the day before his death, she did not report any unusual behavior to him. Resp. to Pet'r's. Finding of Fact at 11. Furthermore, petitioner's testimony is inconsistent with that of Mr. Calixte, who testified that Isaiah did not appear "out of sorts" on July 8, 2008. Id.; Tr. at 95.

Relying on petitioner's earlier prepared affidavit, respondent maintains Isaiah was fine when he awakened around 6:00 a.m. on July 8, 2008. Resp't Proposed Findings of Fact ¶ 8; Tr. at 79. Later that afternoon, around noon, Isaiah played and walked around the kitchen while petitioner gave Mr. Calixte a haircut. Resp't Proposed Findings of Fact ¶ 9; Tr. at 95. Respondent does not dispute petitioner's testimony that Isaiah became cranky that afternoon, but respondent attributes the crankiness to likely tiredness since Isaiah usually napped around that time. Resp't Proposed Findings of Fact ¶ 10; Resp. to Pet'r's. Finding of Fact at 14.

D. Legal Standard and Analysis

In determining whether a petitioner is entitled to compensation under the Vaccine Act, a special master must consider “all . . . relevant medical or scientific evidence contained in the record,” including “any diagnosis, conclusion, medical judgment, or autopsy or coroner’s report . . . regarding the nature, causation, and aggravation of the petitioner’s illness, disability, injury, condition, or death” § 300aa-13(b)(1)(A). The special master must consider “the record as a whole,” § 300aa-13(a)(1), and cannot make a finding of entitlement based on the claims of the petitioner that are not substantiated by medical records or medical opinion. *Id.* The special master’s decision regarding entitlement must include findings of fact and conclusions of law. § 300aa-12(d)(3)(A)(i).

Before an entitlement determination can be made in this case, the undersigned must first resolve the pending factual dispute regarding the circumstances surrounding Isaiah’s death on July 8, 2008. In particular, the undersigned must determine what state Isaiah’s was in, prior to and leading up to, his death. This ruling is limited to resolving the parties’ disagreement on the factual issues.

In vaccine cases, petitioner must prove, by preponderant evidence, the factual circumstances surrounding her claim. § 300aa-13(a)(1)(A). This evidentiary standard requires that the special master “believe that the existence of a fact is more probable than its nonexistence before [she] may find in favor of the party who has the burden to persuade the [special master] of the fact’s existence. *In re Winship*, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (quoting *F. James, Civil Procedure* 250-51 (1965)).

To resolve factual disputes, the undersigned must determine what weight to assign the documentary record—which in this case includes contemporaneous medical and investigation records—and what weight to assign the later-given oral testimony that includes certain factual details that are absent from the existing documentary record. The case law instructs that oral testimony that conflicts with contemporaneous documentary evidence generally receives less evidentiary weight. *See United States v. U.S. Gypsum Co.*, 333 U.S. 364, 396 (1948) (“Where [witness] testimony is in conflict with contemporaneous documents we can give it little weight[.]”); *Montgomery Coca-Cola Bottling Co. v. United States*, 615 F.2d 1525, 1528 (Fed. Cir. 1993) (stating conflicting oral testimony is afforded less evidentiary weight than written medical records). While a decision concerning whether to accord greater evidentiary weight to contemporaneous records or to later-given oral testimony falls “within the purview of the Special Master,” *Burns v. Sec’y of Dep’t of Health & Human Servs.*, 3 F.3d 415, 417 (Fed. Cir. 1993), such decision must be rationally supported. *Id.*

The undersigned has great sympathy for petitioner concerning the difficult loss of her son, but the undersigned cannot credit the aspects of the petitioner's account of the events leading up to Isaiah's death that differ substantially from the balance of the record evidence. The specificity and clarity of petitioner's recall of a range of details pertaining to Isaiah's state of being—more than three years after his death—is highly unusual. Because petitioner's oral testimony is also inconsistent with the documentary record in significant and material ways the undersigned doubts the accuracy of the differing portions of petitioner's testimony.

In petitioner's affidavit, she stated Isaiah cried from “the moment he got his shots until he fell asleep” that night in her arms. Pet. Ex. 1 at ¶ 5. Yet, in her testimony petitioner concedes that Isaiah played and watched cartoons at her grandmother's house that day, and that Isaiah ate during that time. Tr. at 31, 34, 75-77. When asked during her testimony about Isaiah's behavior the morning after receiving the vaccines at issue, petitioner testified to Isaiah's crankiness. Yet in her affidavit, petitioner swore to the fact that Isaiah was “apparently ok when he [awakened,] but [he awakened] extremely early, between 5 and 6 [a.m.]” Pet. Ex. 1 at ¶ 6.

Also in her affidavit, petitioner stated that when she entered the room where Isaiah was lying unresponsively, his face was “clearly visible and nothing was covering his nose or mouth.” Yet, petitioner testified that one of the arranged pillows covered the top part of Isaiah's head, and that his nose and mouth were still visible. Tr. at 83.

Petitioner asserts that Isaiah exhibited cranky behavior for just a short period of time after his prior vaccinations. But his reaction to his last vaccines was unusual because his crankiness persisted from the moment of vaccination, on the afternoon of July 7, until late in the afternoon the following day. See Pet. Proposed Finding of Fact at ¶ 5. Petitioner argues that there were only brief periods of normalcy during the remaining hours of Isaiah's life. Id. at 7, 8. Based on the evidence and testimony, the undersigned is persuaded that Isaiah exhibited the type of crying and crankiness that might typically follow the receipt of a complement of vaccines, but his crankiness was neither as severe or as unrelenting as petitioner avers.

Were the facts as petitioner now claims, the undersigned would expect documented mention of this serious vaccine reaction in the contemporaneous records of Isaiah's pediatrician, the emergency medical technicians, the hospital personnel, or the detective that investigated Isaiah's death. But the filed pediatric records, hospital records and police reports do not support petitioner's claims. Moreover, although petitioner did mention to the Suffolk County detective that Isaiah had received a series of vaccines the day prior to his death, petitioner did

not report to the detective any of the adverse reactions or unusual behaviors she described at the fact hearing.

The documentary record does not support petitioner's claim about Isaiah's crankiness. Nor does the testimony of petitioner's former boyfriend, Mr. Calixte, corroborate petitioner's claims. Mr. Calixte testified instead that Isaiah exhibited normal behavior in the hours preceding his death on July 8. According to Mr. Calixte, Isaiah became cranky only when the time drew near for his mid-afternoon nap. Tr. at 104.

Mr. Calixte's recollection of the events surrounding Isaiah's death is largely consistent with the contemporaneous documentary record—particularly, with the sworn written statement he provided to the Suffolk County Police Department on the day of Isaiah's death. Mr. Calixte informed the detective that he watched television and played with Isaiah the morning after Isaiah received the vaccines at issue. Pet. Ex. 6 at BS 297. Petitioner had assigned care of Isaiah to Mr. Calixte around 9:00 a.m. so she could take nap. Id. Mr. Calixte cared for Isaiah for several hours. Id. Mr. Calixte did not mention in his written statement that Isaiah was unusually cranky or inconsolable, but rather stated that Isaiah had been playful.

Mr. Calixte was credible in his testimony. When he could not recall details about the events in question, he candidly admitted his lack of memory. The details Mr. Calixte could recall were supported by the documentary record.

The contemporaneous records in this case are fairly detailed and largely consistent. Petitioner's recall of the events surrounding Isaiah's demise conflicts with the record in some important respects. Accordingly, the undersigned gives greater weight to the aspects of petitioner's testimony that are consistent with the documentary record. The undersigned also affords substantial weight to Mr. Calixte's testimony, which corresponded closely with the documentary record.

II. FINDINGS OF FACT

For the foregoing reasons, the undersigned determines that a preponderance of the evidence supports the following:

1. Isaiah Steinberg was born a well-infant on January 8, 2008 in Chandler, Arizona. Pet. Ex. 4 at BS 58, 87. At six and ten days old, he had well-child exams. Pet. Ex. 3 at BS 31. He received immunizations on March 21, 2008 with no reported adverse reactions. Id.

2. Petitioner and Isaiah moved to a home in Shirley, New York when Isaiah was approximately four months old. Pet. Ex. 3. Isaiah received routine medical care at Stony Brook University Medical Center. Id.
3. Other than the surgical correction of a hernia, Isaiah exhibited normal growth and development during well-child exams on April 29, 2008, May 20, 2008, and June 6, 2008. Pet. Ex. 3 at BS 20-26. Isaiah received immunizations on May 20, 2008 with no reported adverse reaction. Id.
4. On July 7, 2008, at approximately 3:00 p.m., Isaiah presented to his pediatrician for a well-baby examination. Pet. Ex. 3 at BS 14, 25. No concerns were reported. Id. at BS 24-25. Isaiah received Pediarix, HiB, and PCV during that office visit. Id.
5. Petitioner took Isaiah to visit his grandmother, Alisa Barrett, after his pediatric office visit on July 7, 2008. Pet. Ex. 25. Isaiah exhibited some crankiness during his visit with Ms. Barrett, but he was also playful and watched cartoons. Pet Ex. 25; Tr. at 33-34.
6. After visiting Ms. Barrett, Isaiah returned home with petitioner. Pet. Ex. 6 at BS 292. He fell asleep at approximately 10:00 p.m. in bed with petitioner. Id.; Pet. Ex. 1 at ¶ 5.
7. Isaiah seemed fine when he awakened around 6:00 a.m. on July 8, 2008. Id.; Pet. Ex. 1 at ¶ 6. Petitioner gave him a dose of Tylenol for his teething. Tr. at 38, 42.
8. Kevin Calixte, a former boyfriend of Ms. Steinberg, lived with petitioner and Isaiah at the time Isaiah received the vaccines at issue. After returning home from work, Mr. Calixte cared for Isaiah on July 8, 2008, from approximately 9:00 a.m. until approximately 12:00 p.m., while petitioner napped. Pet. Ex. 6 at BS 296.
9. In the hours Mr. Calixte spent with him, Isaiah seemed normal. Tr. at 94. Mr. Calixte took Isaiah for a walk, watched television with him, and played with Isaiah. Pet. Ex. 6 at 297; Tr. at 94.
10. At approximately 4:00 p.m., Isaiah was placed in the spare bedroom for a nap. Pet. Ex. 6 at BS 293. He was placed on his stomach on a queen-sized bed that was positioned against two walls in the upper right corner of the room. Id. at BS 292. A very soft bed, it had a “pillow top style mattress” and was covered with a “thick soft [blue] comforter.” Pet Ex. 6 at BS 293. Pillows were arranged on the bed to prevent Isaiah from falling. Id.

11. While Isaiah napped, petitioner and Mr. Calixte fell asleep in the next bedroom. Pet. Ex. 6 at BS 293.
12. Mr. Calixte awakened from his nap and found Isaiah unresponsive. Pet. Ex. 6 at BS 292. Mr. Calixte found Isaiah lying on his right shoulder with his back against the right wall. Id.; Tr. at 98. A pillow covered the top portion of his head but his lips and nose were visible. Tr. at 98, 108. Isaiah's lips had turned purple and blue, and a small amount of blood was coming from his nose. Pet. Ex. 6 at BS 292. Blood was also on his upper lip. Tr. at 99.
13. Mr. Calixte did not touch Isaiah, but rather, awakened petitioner. Tr. at 99-101. Petitioner instructed Mr. Calixte to call emergency medical services. Tr. at 100. Petitioner began to administer CPR to Isaiah while receiving telephonic instruction from emergency medical services. Pet. Ex. 5 at BS 283; Pet. Ex. 6 at BS 298.
14. Emergency medical services were contacted at 4:44 p.m., and an ambulance arrived at the house at 4:51 p.m. Pet. Ex. 6 at BS 283. Isaiah was in cardiac arrest when the emergency medical technicians (EMTs) arrived. Id. The EMTs who arrived at the house continued resuscitative efforts. Id.
15. At 4:53 p.m., Isaiah was transported by ambulance to Brookhaven Memorial Hospital Medical Center, where efforts to resuscitate him were unsuccessful. Pet. Ex. 5 at BS 285. He was pronounced dead at 7:18 p.m. on July 8, 2008. Id.
16. Suffolk County Police Department investigated Isaiah's death and obtained a statement from Mr. Calixte regarding the circumstances of his death. Pet. Ex. 6. Based on the report of the medical examiner, the police detective ruled Isaiah's death was not a criminal one. Id.
17. An autopsy was performed on July 9, 2008 by a Suffolk County Medical Examiner. Pet. Ex. 2. The medical examiner ruled that the cause of death was Sudden Unexplained Infant Death, and the manner of death was undetermined. Pet. Ex. 2 at BS 1-12.
18. A VAERS report was completed on July 9, 2008 by Isaiah's pediatrician. Pet. Ex. 2 at BS 14.

The parties shall contact the undersigned's chambers on or before December 5, 2012 to arrange a status conference to discuss next steps.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master