

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 09-90V
Filed: September 17, 2012
Unpublished



USUAMAYAK DANESI,
legal representative of a minor child,
SEAN DANESI,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

Denial; Failure to prove encephalo-
pathy according to Vaccine Injury
Table

DECISION¹

The background and evidentiary review of this case is covered in various filings and will not be repeated here. The most thorough review pertaining to the relevant facts is contained in the undersigned's June 7, 2012 Fact Ruling and Order. The critical findings in that Ruling were that the medical records provide the facts for the case, and the opinion letters of petitioner's expert, Dr. Sletton, do not support petitioner's claim of a Table encephalopathy. *Id.* at 6. For the reasons stated in the Ruling, petitioner was ordered to either dismiss her case or state when a supportive medical opinion would be filed. *Id.* Petitioner filed on August 22, 2012, Petitioner's Status Report and Request for a Final "Decision" by the Special Master. Respondent was given an opportunity to respond to petitioner's filing but declined to file a response, which was noticed to my office by e-mail on September 13, 2012. After consideration of the arguments posed in petitioner's Status Report, the undersigned finds that this Petition must be dismissed for lack of supportive proof.

¹ The undersigned intends to post this decision on the website for the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. *Id.* Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

As noted in the Fact Ruling, Ms. Danesi prosecuted this Petition *pro se* following the withdrawal of counsel. Fact Ruling at 6. She has done an incredible job on behalf of her son. However, the evidentiary hurdles she faced were simply too high – you cannot create evidence where evidence does not exist. That is the essential problem with this case and the essence of the undersigned’s findings in the Fact Ruling. Following the Fact Ruling, this Petition remained unsupported by either medical records or medical opinion. The Statute requires such evidence to find for petitioner. 42 U.S.C. §300aa-13(a). Ms. Danesi’s Status Report does not cure those deficiencies. Instead, Ms. Danesi presents once again her reasons why the undersigned should accept her statements and interpret the medical records as she interprets them. The undersigned once again declines. The undersigned heard Ms. Danesi’s contentions on numerous occasions during status conferences and addressed the same during those calls. The undersigned considered Ms. Danesi’s testimony, the medical records and Ms. Danesi’s arguments prior to issuing the Fact Ruling. The undersigned’s reasoning is set forth fully in the June 7, 2012 Ruling. Given that Ms. Danesi presented no new evidence or no new argument, the undersigned has no further reasoning to add to that contained in the Fact Ruling.

However, one point Ms. Danesi raised in her Status Report, which has been raised numerous times in earlier submissions, deserves mentioning once again. Ms. Danesi argues that the medical records are incomplete as Sean’s symptoms were reported to health care providers but they were summarily dismissed as unrelated to vaccinations and thus not recorded. This contention was addressed in the Fact Ruling. Fact Ruling at 4. While not agreeing that the medical providers failed to report symptoms reported by Ms. Danesi, the undersigned repeats the critical finding from the Fact Ruling:

What petitioner fails to grasp, as the undersigned has attempted to explain during the numerous status conferences, see Order filed August 18, 2010, is that while it may in certain instances be understandable that the medical records do not record every complaint or observation related by the parents, it is not understandable that the medical professionals after examining the child are not recording the signs and symptoms of an encephalopathic child.

Id. Petitioner’s arguments simply do not make sense when measured against the contemporaneous medical records documenting the doctor’s, not the mom’s, observations.

As discussed in the undersigned’s Fact Ruling, this case is unsupported by information contained in the medical records or by an expert opinion. Petitioner was given an opportunity to cure that defect, but chose not to do so and requested a final decision. Thus, for the reasons discussed in the June 7, 2012 Fact Ruling, **this case must be dismissed for lack of proof.** The undersigned so finds. The Clerk of Court is directed to enter judgment accordingly.

IT IS SO ORDERED.



Gary J. Golkiwicz
Special Master