

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

No. 08-436V
Filed with Redaction: April 19, 2011
[Originally filed: December 2, 2010]
Not to be Published

LUISANNA GONZALEZ, as parent and *
natural guardian, of K.A.Q., *
 *
Petitioner, *
 *
v. *
 *
SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *
 *
Respondent. *

Motion for Ruling on the Record;
Diphtheria-Tetanus-Pertussis,
DPT; Haemophilus Influenza Type
B, Hib; Regression in motor mile-
stones

DECISION¹

GOLKIEWICZ, Special Master.

On June 16, 2008, petitioner filed the above-captioned Petition, alleging her son suffered “marked regression in his motor milestones” within four days of his Diphtheria-Tetanus-Pertussis (“DTP”) and Haemophilus Influenza Type B (“Hib”) vaccinations on July 20, 2005. Respondent contested entitlement and the case progressed to a Fact Hearing on April 29, 2010, wherein testimony given by four fact witnesses. The Fact Hearing was held because certain symptoms alleged by petitioner were not documented in the contemporaneous medical records. Following the Hearing, the undersigned encouraged petitioner to seek information from a treating neurologist, but eventually petitioner’s counsel agreed this effort was not productive. See Fact Ruling, 1-2, filed September 9, 2009. Thereafter, a Fact Ruling and Order was issued and petitioner was directed to obtain a medical opinion.

¹ This document constitutes a final “decision” in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision.

Further, the undersigned intends to post this decision on the United States Court of Federal Claims’ website, 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.

Ultimately, on October 22, 2010, petitioner filed an unopposed Motion for Ruling on the Record. Petitioner stated that an expert was consulted following the Fact Hearing; however, the expert was unable to provide petitioner with a supportive opinion. Petitioner averred that the parties to this case have agreed that dismissal is appropriate. Despite counsel's good efforts to support this Petition, the Petition remains unsupported by either medical records or medical opinion. The Act at 42 U.S.C. § 300aa-13(a) provides that the special master "may not make a finding based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." Accordingly, this Petition is dismissed for want of proof.

The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master