

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

No. 10-373V
Filed: March 29, 2012
Unpublished

JILLIAN KAMKIM, in her own right, and as a *
Parent and natural guardian of JAYDON *
CAESAR, a minor, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Denial; Human papillomavirus
vaccine, HPV; Injuries *in utero*;
Birth defects

Lawrence R. Cohan, Anapol, Schwartz, et al., Philadelphia, PA, for Petitioner.
Ann Donohue Martin, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On June 17, 2010, petitioner filed the Petition in this case, alleging her son suffered permanent residual injuries and birth defects due to a human papillomavirus (“HPV”) vaccination petitioner herself received while her son was *in utero*. Petitioner’s (“P”) Petition, filed June 17, 2010 (“Pet.”). On August 5, 2010, the initial status conference was held and an Order issued on August 6, 2010, staying the filing deadline for respondent’s Rule 4(c) Report due to a jurisdictional challenge respondent intended to raise. Order, filed August 6, 2010. On September 21, 2010, respondent filed a Motion to Dismiss. Respondent’s (“R”) Motion to Dismiss, filed September 21, 2011. Respondent moved for dismissal of this case “because [petitioner’s son], the alleged injured party, did not receive the allegedly injurious vaccination”

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.**

pursuant to 42 U.S.C. 300aa-11(c)(1)(A).² R Motion to Dismiss at 1. Petitioner filed her response on November 19, 2010. P Response to Motion to Dismiss, filed Nov. 19, 2010. On March 23, 2011, the undersigned filed a Ruling and Order, denying respondent's Motion to Dismiss. Ruling and Order, filed Mar. 23, 2011. The undersigned found that "part of petitioner's burden on causation will be to show that [her son], *in utero*, received the vaccination that petitioner alleges caused his injuries." Ruling and Order at 3. It was thus petitioner's burden to provide preponderant evidence that petitioner's son received the vaccination and that the vaccination caused the alleged injuries. Id. at 3-4. It was contemplated that petitioner would accomplish this by filing an expert report, for which a scheduling deadline was set. Id.

Thereafter, petitioner filed additional medical records and sought an expert opinion supportive of her case. P Medical Records, filed Oct. 5, 2011; P Status Report, filed May, 23, 2011; P Unopposed Motion for Extension of Time, filed Jul. 22, 2011; P Unopposed Motion for Leave to file Attached Motion for Enlargement out of Time, filed Sep. 23, 2011; Unopposed Motion for Extension of Time to File Expert Report, filed Nov. 21, 2011. On January 20, 2012, petitioner filed a status report discussing her efforts to obtain supportive medical opinions. P Status Report, filed Jan. 20, 2012. In this Status Report, petitioner noted she had employed two experts to support her case that her son received the vaccination and that his injuries were the result of this vaccination. Id. Petitioner noted that the experts' work was not duplicative and both experts were necessary to the investigation of her claims. Id. "However, after their respective reviews of the file . . . both experts ultimately came to the conclusion that the Gardasil vaccination likely did not cause the injury alleged." Id. Consequently, petitioner requested thirty days to conclude her case. Id. Respondent did not object to granting petitioner this time. Order, filed Jan. 24, 2012.

On February 15, 2012, petitioner filed a Motion for Judgment on the Record, which reiterated the information in her January 20 Status Report and requesting a judgment on the record "effectively dismiss[ing] petitioner's case." P Motion for Judgment, filed Feb. 15, 2012.³ On February 29, 2012, respondent filed her Response to Petitioner's Motion for Judgment on the Record, wherein she stated she does not object to dismissal of the vaccine injury portion of this case.

By petitioner's own admissions in her January 20 Status Report and the February 15 Motion for Judgment, petitioner is unable to provide preponderant evidence that the HPV vaccinations she received caused her son's alleged injuries. Further, 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

² This Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 et seq. (West 1991 & Supp. 2002) (hereinafter "Program," "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. §§ 300aa of the Act.

³ Petitioner's Motion for Judgment also notes counsel's good faith and efforts in pursuing petitioner's case. Counsel requested the opportunity to submit a request for attorneys' fees and costs. P Motion for Judgment, filed Feb. 15, 2012. In her reply, the respondent preserves her jurisdictional challenge to petitioner's case as the case was based on a child *in utero* receiving the vaccine, which respondent contends is not covered by the Act. R Response to Petitioner's Motion for Judgment on the Record, filed Feb. 29, 2012. Respondent contends the court has no jurisdiction to award attorneys' fees and costs under the Act and further challenges such an award on reasonable basis grounds. Id. The undersigned makes no finding on the issue of attorneys' fees and costs; this Decision concludes only the portion of this case regarding entitlement to compensation for the alleged vaccine injury itself. A Motion for Attorneys' Fees and Costs is not presently before the undersigned.

petitioner alone, unsubstantiated by medical records or by medical opinion.” In accordance with section 13(a) the undersigned has no option but to **deny** petitioner’s claim for want of proof.

The Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.⁴

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

⁴ 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.