

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

No. 10-713V  
Filed: July 28, 2011  
Unpublished

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MIKE and LAURA SHRIVER,  
as legal representatives of a minor child,  
ALEXANDER J. SHRIVER

Petitioners,

v.

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Respondent.

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\* Denial; Influenza (flu) vaccine;  
\* Abdominal pain, nausea, fatigue,  
\* dizziness, balance problems,  
\* impaired concentration, vomiting,  
\* hand tremors, shortness of breath,  
\* anorexia, fever, impairments in  
\* memory and recall  
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*Richard H. Moeller, Bernstein, Moore, et. al., Sioux City, IA, for Petitioner.*  
*Jennifer Leigh Reynaud, U.S. Department of Justice, Washington, D.C., for Respondent.*

**DECISION**<sup>1</sup>

**GOLKIEWICZ**, Special Master.

On October 19, 2010, a *pro se* petition was filed in this matter alleging petitioners' son suffered "abdominal pain; severe nausea; extreme fatigue; dizziness; balance problems; impaired concentration; vomiting; bilateral hand tremors; shortness of breath; anorexia; fever; and impairments in his short-term memory/recall," eight days after his December 30, 2008 influenza vaccination. Petition at 1 (hereinafter "Pet."). Petitioners also state, "[t]his progressed to marked weight loss and required numerous diagnostic studies, specialist consults, and hospitalizations to determine the etiology of these symptoms." Pet. at 1. On November 17, 2010, petitioner's present attorney was substituted as counsel.

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<sup>1</sup> 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 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.

Petitioners' son received his influenza vaccine on December 30, 2008, when he was sixteen years old. Petitioners' Exhibit ("P Ex") 1 at 1. Prior to vaccination, petitioners' son had a history of periodic hypertension, left hip bursitis, pelvic muscle imbalance, and atopic dermatitis. P Ex 4 at 4-5; P Ex 8 at 3, 5. Six days post vaccination, on January 6, 2008, petitioners' son presented at his primary physician because he had nausea that he believed was from the flu shot. P Ex 4 at 2. Petitioners' son was prescribed Phenergan. P Ex 4 at 2. On January 9, 2009, petitioners' son had surgery to correct his bilateral exertional compartment syndrome and follow up appointments with the surgeon showed only mild discomfort. P Ex 8 at 7-8, 13-14.

On January 28, 2009, petitioners' son was again seen by his primary physician at Seaward Family Medical Center (SFMC) for "severe nausea." He was diagnosed with gastritis and given Protonix. P Ex 4 at 2. On March 25, 2009, petitioners' son reported continued nausea as well as pain and swelling in his abdomen. P Ex 4 at 9. Petitioners' son had negative celiac and helicobacter pylori testing. P Ex 4 at 9, 15. He also had an endoscopy which was normal, and an abdominal ultrasound showing his gallbladder, liver, kidneys, spleen, and pancreas to be normal. P Ex 6 at 19. On April 29, 2009, petitioners' son was seen by a nurse practitioner at the Pediatric Gastroenterology Clinic at Children's Hospital and Medical Center. P Ex 5 at 6-7. Petitioners' son received a complete workup and laboratory analysis which only revealed a previous infection of Epstein Barr Virus. P Ex 5 at 11-17, 52; P Ex 6 at 8.

From May 2009 through June 2009, petitioners' son had a battery of tests that revealed "esophagitis, possibly eosinophilic" and a MRI that revealed low-lying cerebellar tonsils but was not Chiari malformation. P Ex 5 at 57-58; P Ex 3. On September 17, 2009, petitioners' son presented to SFMC for "chronic fatigue and weakness." P Ex 4 at 7. Nine months passed before petitioners' son was seen on June 2, 2010, for chest pain after exercising. P Ex 4 at 16. On December 22, 2010, petitioners' son was seen by an allergist who reported that petitioners' son had GERD (gastro-esophageal reflux disease) and postnasal drip. P Ex 2 at 5.

On March 30, 2011, respondent filed her Rule 4(c) Report contesting compensation. Respondent Report ("R Report") at 13. Respondent asserted first, that petitioners have yet to provide adequate records to show petitioners' son actually received the flu vaccine on December 30, 2008. R Report at 16. Next, respondent asserted that even if the vaccine record is produced petitioners' have failed to prove that the vaccine was more likely than not the cause of petitioners' son's injuries because they have yet to proffer an expert opinion showing how the flu vaccine can cause or did cause petitioners' son's injuries. R Report at 17. Respondent also noted the treating physicians' opinions' on petitioners' son's injuries caused by the vaccine were mere speculation without a supporting medical theory. R Report at 19. Lastly, respondent argued that petitioners have failed to show whether petitioners' son's injuries occurred within a medically appropriate time frame. R Report at 19.

On July 19, 2011, petitioners filed a Motion for Decision asking the undersigned to render a decision based upon the evidence previously submitted because "there is insufficient evidence to support a finding of entitlement." P Motion for Decision at 1.

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.” As stated above, the medical records do not support causation in this case and petitioners were unable to supply a supportive medical opinion. Thus, this Petition remains unsupported by either medical records or medical opinion. In accordance with section 13(a) the undersigned has no option but to **deny** petitioners’ claim for want of proof.

The Clerk shall enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

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

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<sup>2</sup> 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.