

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

No. 09-633V
Filed: July 22, 2011
Unpublished

NAPORSCHÉ WATKINS,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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* Denial; Human Papillomavirus,
* HPV; meningococcal; Hepatitis A;
* Acute Disseminated Encephalo-
* myelitis, ADEM
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William E. Cochran, Jr., Black, McLaren, et al., Memphis, TN., for Petitioner.
Debra A. Filteau Begley, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On September 28, 2009, a Petition for compensation was filed alleging petitioner developed a skin rash, gastrointestinal upset, blurred vision, and acute disseminated encephalomyelitis (“ADEM”) that was caused in fact by the Human Papillomavirus (“HPV”) and hepatitis A vaccines administered on March 27, 2008, and the HPV and meningococcal vaccines administered on June 4, 2008. Petition ¶¶ 3, 4, 6, 11.

Petitioner had her first HPV vaccination on March 27, 2008, and a Hepatitis A vaccination. Petition ¶ 2. About a month later she developed a rash, about which she was not concerned. Petition ¶ 3. On June 4, 2008, petitioner received a second HPV vaccination as well as a meningococcal vaccination. Petition ¶ 4; see also P Ex 1 and 2. She developed a more severe rash. She was seen by two dermatologists and prescribed medication. Petition ¶ 5; see also P Ex. 1, 3, 4. On October 14, 2008, petitioner went to the emergency room for epigastric

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 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.

pain and vomiting. P Ex 14 at 14-15. On February 25, 2009, she was again seen at the emergency room for headache, nausea and dizziness, and blurred vision. P Ex 6 at 21.

On March 20, 2009, petitioner saw neurologist Dr. Shankar Natarajan. P Ex 15 at 5. Dr. Natarajan ordered a MRI, EEG, and lab testing. The MRI showed “diffuse leukoencephalopathy of uncertain origin...primary considerations are felt to be metabolic white matter disease and atypical appearance of multiple sclerosis, sarcoid, and HIV.” P Ex 15 at 3. Other lab results were normal. P Ex 15 at 7. On March 30, 2009, she had a lumbar puncture, which was within normal limits for her CSF white blood cell count, protein, and glucose, and her MS panel was negative. P Ex 15 at 1. On April 23, and April 27, 2009, petitioner saw neurologist, Dr. Gregory Condon for testing. P Ex 7 at 4. On May 7, 2009, Dr. Condon reported the testing revealed a visual processing abnormality and a recent MRI “shows diffuse white matter intensity.” P Ex 21 at 320; P Ex 7 at 1. On July 16, 2009, continued improvement was reported to Dr. Condon, and Dr. Condon recorded mental status as “quite normal.” P Ex 6 at 22. On September 1, 2009, petitioner saw Dr. Condon again for an increase in her symptoms. A second MRI showed white matter signal that was essentially unchanged from the previous MRI. P Ex 22 at 19.

Petitioner continued to be seen by Dr. Condon through February 2010 at which time he referred her to the Mayo Clinic. P Ex 22 at 1. She also sought an opinion at the Cleveland Clinic Mellen Center for MS. P Ex 27. Her labs were positive for a “moderate amount of 2,5 dichlorophenol, a metabolite of p-dichlorobenzene” a chemical found in household items such as moth balls, room deodorizers and toilet bowl cleaners. P Ex 27 at 13. On May 26, 2010, she was seen at the Mayo clinic by Dr. Neerah Kumar. Dr. Kumar believed her condition was “relapsing/remitting white matter disease, possibly related to toxic exposure, doubt possibility of ADEM.” P Ex 29 at 21.

On April 14, 2010, petitioner’s filed medical records. On that same day, petitioner filed a Statement of Completion. On May 26, 2010, the undersigned’s office communicated with the parties regarding additional medical records for treatment at the Mayo Clinic. Order May 26, 2010 at 1. On November 11, 2010, the petitioner filed all the necessary medical records and filed a second Statement of Completion.

On January 10, 2011, respondent filed her Rule 4(c) Report contesting compensation. In contesting compensation, respondent asserted that petitioner had not submitted an expert report to support their claim. R Report at 12. Additionally, respondent noted that numerous doctors who examined petitioner did not believe that her conditions were caused by her vaccinations. R Report at 13. Rather, respondent asserted that petitioner bears the burden of ruling out whether the alleged condition was caused by toxic exposures, as noted by the reviewing neurologists at the Mayo and Cleveland Clinic. Id. Respondent concluded that petitioner had not met the burden “because they have failed to produce any evidence the . . . vaccines are a **more likely** cause of her injury than other conditions raised in the record.” Id. (emphasis in original).

On July 11, 2011, petitioner filed a Motion for Decision Dismissing Petition. [hereinafter Mtn. for Dismissal] In the motion, petitioner stated, “[p]etitioner has been unable to secure evidence to prove entitlement to compensation in the Vaccine program.” Mtn. for Dismissal ¶ 1.

Therefore, petitioner asks the undersigned to dismiss the case so she may file a civil action in the future. Id. at ¶ 4.

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.” To date, the Petition remains unsupported by either medical records or medical opinion. Thus, in accordance with § 13(a) the undersigned has no option but to **deny** petitioner’s claim for want of proof.

The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

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

² 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.