

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-879V

Filed: June 23, 2009

Not To Be Published

DIANE CORDICK, a single woman

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GBS; Flu Immunization

Petitioner,

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v.

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SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

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Respondent.

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Jay Arthur Bansal, Law Offices of Jay A. Bansal, Tempe, AZ, for petitioner.

Linda Sara Renzi, United States Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

GOLKIEWICZ, Chief Special Master.

On August 11, 2005, petitioner, Diane Cordick filed a petition pursuant to the National

¹ Because this Ruling on Entitlement contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this Ruling on Entitlement 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" Ruling will be available to the public. Id.

Vaccine Injury Compensation Program² (“the Act” or “the Program”) alleging that she suffered Guillain-Barre Syndrome (GBS) among other injuries, as a result of a flu vaccination she received on December 5, 2001. Petition at 1. On November 30, 2005, respondent filed a Report pursuant to Vaccine Rule 4 contending that compensation was inappropriate and the petition should be dismissed. Respondent’s Report, filed November 30, 2005. To elicit expert testimony, a Hearing was held on June 18, 2009. Petitioner presented Sheldon Margulies, M.D., as an expert witness. Respondent presented Steven Herskovitz, M.D., as an expert witness. This Ruling follows.

After listening to the testimony elicited by both experts at the June 18, 2009 Hearing, reviewing the entire record, and for the reasons set forth below, the undersigned finds petitioner has met her burden of proof required under the Act, and thus is entitled to compensation. A summary of the findings follow.

The undersigned found respondent’s expert, Dr. Herskovitz, far more persuasive than petitioner’s expert, Dr. Margulies. Dr. Herskovitz possesses far superior experience and credentials and the depth of his testimony reflected his impressive background. Dr. Margulies in contrast possessed a far less impressive background and his testimony in comparison to Dr. Herskovitz was superficial in content. Thus, on disagreed upon medical issues, the undersigned will utilize the testimony of Dr. Herskovitz.

Based upon Dr. Herskovitz’s testimony, stated in response to the undersigned’s questioning, it is a reasonable interpretation of this record that Ms. Cordick suffered a mild form of GBS following her flu shot. Further, Dr. Herskovitz agreed with the undersigned that it is reasonable to construe Ms. Cordick’s future medical course to include some residua of this mild GBS. However, Dr. Herskovitz opined that a large part of Ms. Cordick’s complex medical picture is due to her degenerative disk disorder. Both experts stated that Ms. Cordick’s respiratory issues are unrelated to her flu vaccination.

Numerous vaccine cases involving GBS resulting from a flu immunization have been compensated under the Program. Thus, it is accepted that the flu vaccine can and does cause GBS. It is so found in this case. Relying on Dr. Herskovitz’s testimony the undersigned finds that Ms. Cordick’s flu vaccine caused a mild case of GBS with continuing residua. However, also relying upon Dr. Herskovitz’s testimony, Ms. Cordick also suffers from significant medical issues due to her degenerative disc disorder.

Accordingly, petitioner is entitled to compensation for her continuing symptoms related to her mild case of GBS caused by her flu immunization.

² The National Vaccine Injury Compensation Program (hereinafter 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. (2006) (“Vaccine Act” or the “Act”).

Petitioner is hereby Ordered to file the following items within 45 days:

- Information related to petitioner's Social Security disability benefits;
- petitioner's most recent medical records; as well as a
- a statement regarding how and when petitioner will prepare a damages request, which shall include an explanation and support for determining how the damages were calculated - specifically how it was determined what damages are related to the GBS as opposed to the degenerative disk disorder.

The undersigned strongly urges the parties to informally resolve this matter. Petitioner's status report shall include information related to the parties efforts in this regard.

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master