In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 10-689V
Filed: September 14, 2012
(Not to be published)

SHELLEY TAYLOR, as the parent and natural guardian of B.T., an infant, Petitioner, v. SECRETARY OF HEALTH AND HUMAN SERVICES Respondent.	Petitioner's Motion for a Ruling on the Record; Insufficient Proof of Causation; Vaccine Act Entitlement; Denial Without Hearing

DECISION[1]

On October 13, 2010, the petitioner, Shelley Taylor, filed a petition for compensation under the National Vaccine Injury Compensation Program ("the Program"),[2] alleging that her daughter B.T. suffered a number of vaccine-induced symptoms, as a result of several vaccines that B.T. received on October 18, 2007. Petitioner filed extensive medical records relating to her claim on December 14, 2010, June 14, 2011, August 30, 2011, and December 5, 2011.

On August 10, 2012, petitioner filed a "Motion for a Final Decision on the Record" which acknowledged that petitioner "will not be filing an expert report." In that motion, petitioner alleged that as a result of a tetanus vaccine on October 18, 2007, B.T. suffered "systemic scleroderma"-- that is, hardening of the skin. The information in the record, however, does not show entitlement to an award under the Program.

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[1]Because this document contains a reasoned explanation for my action in this case, I intend to post this order on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, 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, this entire document will be available to the public. *Id.*

[2] The statutory provisions governing the National Vaccine Injury Compensation Program are found in 42 U.S.C. § 300-10 *et seq*. (2006 ed.).

A. FACTS

B.T. was born on August 4, 1994. (See Pet. Ex. 1.) B.T. was a patient at Amory Pediatrics from birth to age four, at which point she received health care at Laurelwood Pediatrics until the present. She saw her pediatrician regularly for normal pediatric issues. (Id.) In her first three years of life, B.T. was treated for warts on at least two occasions. (Pet. Ex. 9 at 1, 2.)

B.T. received several vaccinations on October 18, 2007, during a well-check visit, including the TDaP (tetanus, diphtheria, acellular pertussis). (Pet. Ex. 2 at 28, 39, 45, 48.)

One week later, on October 25, 2007, B.T. presented to Dr. Kaplan, a dermatologist, complaining of multiple warts of her left forehead, right knee, and left hand. The diagnosis was verruca vulgaris, and the treatment included Differin gel applied topically at night and Aldara cream applied daily. Dr. Kaplan noted that she was "warned of possible scarring." (Pet. Ex. 9 at 3.)

On December 6, 2007, she saw her pediatrician with a two-day history of sore throat and rhinorrhea, and she received her HPV #2 vaccination. (Pet. Ex. 2 at 28.) She was also re-checked for a cut and possible staph infection on the left side of her head, which occurred November 12, 2007, and was subsequently treated for this cut with Levaquin. (Id. at 28, 39).

B.T. saw Dr. Kaplan on February 20, 2008, for multiple warts on her knee and face that were increasing in size. (Pet. Ex. 9 at 4.) She was treated with cryosurgery, Aldara three times per week for new warts, and Differin gel nightly. She was referred to Dr. John Sellars for treatment of warts on her hands. (Id.)

On May 29, 2008, she had another well-visit with her pediatrician at Laurelwood Pediatrics. During this exam she had normal vital signs and a normal exam, and received her HPV #3 vaccination. (Pet. Ex. 2 at 26, 39.) During this visit the following was noted: "indentations in skin+ is spreading (started [with] HPV shot)." (Id. at 26.)

Dr. Kaplan examined B.T. again on July 23, 2008, because of more warts on her leg and hand that were increasing in size. Dr. Kaplan's diagnosis was verruca vulgaris, and B.T. was treated with cryosurgery and medicated with Aldara three times per week for any new warts. (Pet. Ex. 9 at 5.)

On September 17, 2008, 11 months after her vaccinations of October 18, 2007, B.T. visited Dr. Kaplan with complaints of "spots on skin." She had developed more warts on her right lower leg and hand. She also had pigmented lesions on her shoulders and extremities. She stated that the "problem started after she received a TB vaccine." (Pet. Ex. 9 at 6.)

B.T. again visited her pediatrician at Laurelwood Pediatrics on September 30, 2008, for indentations in her skin that were spreading, reporting that they started after the HPV vaccine. The impression was dermatitis, noted as "very unusual." (Pet. Ex. 2 at 26.)

On November 1, 2008, B.T. presented to Laurelwood Pediatrics with the diagnosis of atrophoderma. Various blood tests were ordered. (Pet. Ex. 2 at 25.)

On November 2, 2008, over one year after her vaccinations of October 18, 2007, B.T. went to Saint Francis Hospital with lower abdominal pain, nausea and vomiting, and a rash on her torso and face. (Pet. Ex. 5.3 at 79.) The diagnosis was a ruptured ovarian cyst. She was discharged and prescribed Phenergan, Reglan, and hydrocodone/acetaminophen. (Pet. Ex. 5.3 at 77.)

She visited her pediatrician on November 8, 2008, for right lower quadrant pain and fever. She was diagnosed with a urinary tract infection. (Pet. Ex. 2 at 25.)

On November 10, 2008, B.T. visited Dr. Skinner, a dermatologist at MedPlex Dermatology, for lesions on her trunk and extremities. She had been otherwise healthy but reported an eight-month history of lesions on her shoulders, upper extremities, and right face. The diagnosis was atrophoderma. (Pet. Ex. 8 at 21-22.)

B.T. returned to MedPlex Dermatology on November 17, 2008, for a skin biopsy. (Pet. Ex. 8 at 19.) The results of the biopsy suggested no evidence of anetoderma or atrophoderma. It was noted there was slight acantholysis with focal hyperkeratosis overlying a sparse perivascular inflammatory infiltrate predominantly consisting of lymphocytes. (Pet. Ex. 8 at 23.)

Thereafter, on multiple occasions in 2008 through 2010, B.T. again visited dermatologists or other physicians for treatment of warts or skin problems. (E.g., Pet. Ex. 8, 6.2, 3, 4, 9, 10.)

B. DISCUSSION

To receive compensation under the Program, the petitioner must prove either: 1) that B.T. suffered a "Table Injury"--*i.e.*, an injury falling within the Vaccine Injury Table--corresponding to one of his vaccinations, or 2) that B.T. suffered an injury that was actually caused by a vaccine. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). In my examination of the filed medical records, however, I did not find in the record any evidence that B.T. suffered a "Table Injury." Further, the records do not contain a medical expert's opinion or any other evidence indicating that B.T.'s condition was caused by her tetanus vaccination. No physician expressed such an opinion in the records that I reviewed, and the petitioner has not pointed to any place in the records where any physician stated such an opinion.

Under the statute, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioner's claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

In the Motion filed on August 10, 2012, petitioner requested that I rule upon the record as it now stands. Accordingly, I will now rule upon the record.

I am, of course, sympathetic to the fact that B.T. suffers from very unfortunate skin conditions. However, under the law I can authorize compensation only if a medical condition or

injury either falls within one of the "Table Injury" categories, or is shown by medical records or competent medical opinion to be vaccine-caused. No such proof exists in the record before me. Accordingly, it is clear from the record in this case that the petitioner has not demonstrated either that B.T. suffered a "Table Injury" or that her condition was "actually caused" by a vaccination. Therefore, I have no choice but to hereby DENY this claim. In the absence of a timely-filed motion for review of this decision (see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accord with this decision.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master