

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-390V

March 25, 2011

Not to be Published

BRITTNEY D. FISTE, *

Petitioner, *

v. *

Dismissal on motion
of petitioner; Gardasil

SECRETARY OF THE DEPARTMENT *

OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Roxane Fiste, Vandalia, OH, for petitioner.

Darryl R. Wishard, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION

On June 24, 2010, petitioner filed a petition on her own behalf for compensation under the National Childhood Vaccine Injury Act of 1986¹ (hereinafter the "Vaccine Act" or the

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy.

Petitioner has 14 days within which to move to redact a decision on one of these bases.

"Act"), alleging that she suffered numerous injuries after receiving human papillomavirus or Gardasil vaccine.

Initially, petitioner was represented by counsel, but he moved to withdraw on October 6, 2010, which motion the undersigned granted on October 12, 2010.

Petitioner's mother then represented petitioner as is permissible under Rule 83.1(a)(3) of the Rules of the United States Court of Federal Claims.

On March 24, 2011, petitioner orally moved for a decision dismissing her petition so that she can sue civilly. Petitioner's motion is hereby granted.

DISCUSSION

To satisfy her burden of proving causation in fact, petitioner must prove by preponderant evidence "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." Althen v. Sec'y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec'y of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[.]" the logical sequence being supported by "reputable medical or scientific explanation[.]" *i.e.*, "evidence in the form of scientific studies or expert medical testimony[.]"

Petitioner has not provided any proof to satisfy the Althen three prongs. Section 300a-13(a) of the Vaccine Act states that the special master may not rule in favor of petitioner "based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." Petitioner has not filed an expert medical opinion in support of her allegations and the medical

records do not substantiate her allegations. She has not made a prima facie case of causation in fact.

Petitioner's motion to dismiss is hereby granted.

The undersigned called to petitioner's mother's attention during the March 24th status conference the provisions of 42 U.S.C. §300aa-21(a)(2) which require petitioner to file an election with the court not later than 90 days after the date of the entry of judgment, stating that she elects to file a civil action for damages, and serve said election on respondent's counsel.

CONCLUSION

Petitioner's petition is dismissed. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.