

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-544V

October 4, 2011

Not to be Published

* * * * *

CHLOE SAMPLEY, as parent and natural
guardian of JONATHAN SAMPLEY, II,
a minor child,

*

*

*

Petitioner, *

*

v. *

Petitioner moves to dismiss;
seizures; four-month shots

*

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

*

*

*

Respondent. *

*

* * * * *

Ann C. Toale, Sarasota, FL, for petitioners.

Althea W. Davis, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access.

On August 17, 2009, petitioners Jonathan and Chloe Sampley filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-10-34 (2006), alleging that their son Jonathan Sampley, II (hereinafter, “Jonathan”) suffered seizures after receiving numerous vaccinations on November 6, 2007. Medical records indicate that he had had abnormal movements since birth. Ex. 3, p. 213. Seizure disorders run in the family (paternal aunt; grandfather). Med. recs. at Ex. 3, p. 214. Petitioners’ counsel informed the undersigned that an expert retained to review this case, Dr. Marcel Kinsbourne, a pediatric neurologist, informed her that he could not support the case.

On September 29, 2011, petitioner Jonathan Sampley moved to withdraw as a petitioner. Counsel for petitioners was unable to contact petitioner Chloe Sampley to see if she similarly wanted to withdraw. The undersigned issued an Order on October 4, 2011, granting Jonathan Sampley’s motion to withdraw as a petitioner, leaving Chloe Sampley as the sole petitioner. Subsequently, on the same day, petitioner’s counsel informed the undersigned’s law clerk that Chloe Sampley similarly sought to withdraw from the case, resulting in dismissal of this petition.

For the reasons stated below, the undersigned hereby orders the petition dismissed.

DISCUSSION

To satisfy their burden of proving causation in fact, petitioners 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[.]”

Without more, “evidence showing an absence of other causes does not meet petitioners’ affirmative duty to show actual or legal causation.” Grant, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. *Id.* at 1148.

Petitioner must show not only that but for the vaccine, Jonathan would not have had seizures, but also that the vaccine was a substantial factor in bringing about his seizures. Shyface v. Sec'y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

In the instant action, petitioner has not provided any expert report to substantiate her allegations that Jonathan’s four-month vaccinations caused his seizure disorder. Petitioner has failed to prove the three prongs of Althen.

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.

October 4, 2011
DATE

s/Laura D. Millman
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.