

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

BRITTNEY P. REVELL,

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Petitioner,

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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No. 11-669V

Special Master Christian J. Moran

Filed: August 8, 2012

Decision on the record; insufficient
proof of causation; Gardasil vaccine;
seizure disorder.

William G. Dobson, Lober, Dobson & Desai, LLC, Macon, GA, for petitioner;
Justine E. Daigneault, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Brittany Revell filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 *et. seq.* Ms. Revell alleged that she suffered from a progressive increase in seizure activity, resulting from the receipt of the Gardasil vaccine administered to her on October 13, 2009. Pet. at 1. The information in the record, however, does not show entitlement to an award under the Program.

I. Background

Ms. Revell filed her petition on October 13, 2011. On November 29, 2011, Ms. Revell filed her medical records (exhibits 1-10), as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A). Ms. Revell continued collecting and filing her records through January 24, 2012.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this ruling on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

These records show the following: Ms. Revell received her first Gardasil dose on April 22, 2008 (exhibit 14 at 17), her second dose on June 25, 2008 (exhibit 14 at 17, exhibit 2 at 2), and her third dose on October 13, 2009 (exhibit 14 at 17, exhibit 2 at 1). On May 11, 2008, Ms. Revell presented to the Vaughan Regional Medical Center emergency room. Ms. Revell reported an “altered mental status.” Although Ms. Revell’s treating doctors did not diagnose her with a seizure disorder, she characterizes this incident as her first seizure. Pet’r Mot. at 2; exhibit 11 at 1 (Ms. Revell’s affidavit); exhibit 3 at 4 (Vaughn Regional Medical Center). This occurred after the first dose of Gardasil.

On March 28, 2012, respondent filed her report pursuant to Vaccine Rule 4. In this report, respondent first addressed a possible causation claim. Respondent stated that a claim alleging that the first dose of the Gardasil vaccine caused Ms. Revell’s seizures is time-barred. Ms. Revell did not file her petition until October 13, 2011, which is more than 36 months after Brittany’s first claimed seizure episode. In lieu of a causation theory, respondent states that Ms. Revell is trying to make a significant aggravation claim, alleging that the third Gardasil vaccine caused an increase in her seizure activity. However, respondent states that Ms. Revell has failed to meet her burden of showing a significant aggravation of a seizure disorder. Resp’t Rep’t at 8-9 (citing Pet. at 1). Respondent recommended that compensation be denied.

A status conference was held on April 12, 2012 at which time, Ms. Revell’s counsel was ordered to file a status report by May 4, 2012, indicating Ms. Revell’s proposed next step for her case. Ms. Revell filed this status report on May 18, 2012. She stated that she “has exhausted her efforts to obtain an expert other than Petitioner’s gynecologist who wrote a letter on behalf of Petitioner...” See exhibit 10 at 5.² Ms. Revell’s counsel advised that he would file a motion for judgment on the record within 30 days.

Ms. Revell filed a motion for judgment on the record on July 17, 2012. Respondent filed a response on July 27, 2012. With the submission of these filings, this case is now ready for adjudication.

II. Analysis

For some vaccines, the Secretary has associated certain injuries with the receipt of those vaccines. See 42 U.S.C. § 300aa-14. For the Gardasil vaccine, there are no injuries listed on the Vaccine Injury Table. 42 C.F.R. § 100.3. Thus, Ms. Revell cannot benefit from the presumption of causation.

² Dr. May’s letter is also produced in exhibit 14 at 15.

The Vaccine Act authorizes a petitioner to receive compensation when either the vaccine causes an injury or the vaccine significantly aggravates a pre-existing claim. 42 U.S.C. § 300aa-11(c)(ii)(I). Here, although Ms. Revell alleges a causation claim, her case is really one for significant aggravation. A claim alleging that the first dose of Gardasil caused a seizure disorder cannot proceed because of the statute of limitations.³ Ms. Revell received her first dose of Gardasil on April 22, 2008 and claims that she began having seizure activity on May 11, 2008. Pet'r Mot. at 2. The statute of limitations requires that the petition be filed within 36 months of the onset of the seizure disorder, that is, by May 11, 2011. Ms. Revell filed her petition on October 13, 2011 after the time set in the statute of limitations expired. Thus, she is necessarily pursuing a claim that the third dose of Gardasil significantly aggravated her preexisting seizure disorder.

In support of her significant aggravation claim, Ms. Revell relies upon her affidavit and her medical records. Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported either by medical records or by the opinion of a competent physician.⁴ 42 U.S.C. § 300aa-13(a)(1).

Ms. Revell offered a letter from her treating gynecologist, Dr. May. Exhibit 10 at 5. Dr. May states, "Shortly after the series [of Gardasil vaccinations], she [Ms. Revell] developed a seizure disorder and at least temporally a suspicion exists as to the relationship between Gardasil and the development of this seizure disorder." This statement alone is insufficient to establish entitlement to compensation. Ms. Revell has not persuasively shown why the vaccine, and not the natural course of the seizure disorder, is responsible for her condition. While Dr. May makes reference to a temporal association between the vaccination and Ms. Revell's condition, her statement is mere suspicion and is not supported. See Davis v. Sec'y of Health & Human Servs., 94 Fed. Cl. 53, 68 (2010) ("[The doctor's] postulates may ultimately be proven to be correct, as a scientific matter, but medical science has not yet advanced sufficiently far to conclude that his conceptual approach to causation can now be said to be established by a preponderance of the evidence."). Further, a temporal relationship alone is not enough to support Ms. Revell's claim for compensation. Grant v. Sec'y of Health & Human Servs., 956 F.2d 1144, 1147 (Fed. Cir. 1992).

³ The statute of limitations in Vaccine Program cases states that "no petition may be filed . . . after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury." 42 U.S.C. § 300aa-16(a)(2).

⁴ Ms. Revell did not file a report from a specially retained doctor.

Accordingly, it is clear from the record in this case that Ms. Revell has failed to demonstrate either that her injuries were “actually caused” by a vaccination, or that her injuries were “significantly aggravated” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/Christian J. Moran
Christian J. Moran
Special Master