IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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ERIN SILVA,	*	
	*	No. 10-101V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: November 30, 2011
	*	
SECRETARY OF HEALTH	*	Ruling on the record; neurological
AND HUMAN SERVICES,	*	demyelinating injury; human
	*	papillomavirus vaccine;
Respondent.	*	insufficient proof.
* *		

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for petitioner; Darryl R. Wishard, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION[1]

Erin Silva filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et seq., on February 18, 2010. Her petition alleged that she suffered a neurological demyelinating injury as a result of the human papillomavirus ("HPV") vaccine administered to her on March 8, 2007. 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[1] Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before 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 delete such material from public access. 42 U.S.C. § 300aa–12(d)(4); Vaccine Rule 18(b).

information in the record, however, does not show entitlement to an award under the Program.

I. Background

Ms. Silva received the first dose of the HPV vaccine on January 11, 2007. Two days prior to this dose, Ms. Silva saw her primary care physician, Dr. Manuel Arroyo, for pain in her left leg for one year and a sore throat. Dr. Arroyo prescribed Motrin. Exhibit 1 (records from Dr. Arroyo) at 28, 31.

On March 8, 2007, Ms Silva received her second dose of HPV vaccine. Exhibit 11 (transcribed records of Dr. Arroyo) at 16. She was not seen again by Dr. Arroyo until April 5, 2007. During this appointment, she was treated for possible strep throat and acne.

Four days later, Ms. Silva returned to Dr. Arroyo for a follow-up appointment, and complained of having back pain for three days. She was prescribed Soma, which is a muscle relaxer (Dorland's Illustrated Medical Dictionary, 301, 1759 (31st ed. 2007)), Motrin, Vicodin, and heat. Exhibit 1 at 23; exhibit 11 at 15. Ms. Silva returned to Dr. Arroyo on April 13, 16, and 17, 2007. She was complaining of back and leg pain. Exhibit 11 at 13-15. On April 16, 2007, an MRI of Ms. Silva's lumbar spine was essentially normal. Exhibit 2 (records from Neuroscience Medical Group) at 116-17. On April 17, 2007, Dr. Arroyo recommended a discussion with Dr. Janumpally, a neurologist. Exhibit 11 at 13-15.

On April 17, 2007, Dr. Janumpally saw Ms. Silva "for a stat evaluation." Dr. Janumpally recorded that Ms. Silva had "hyperreflexia in both lower extremities with sensory level around the level of T11." He diagnosed Ms. Silva as having transverse myelitis probably with a postviral etiology. At the time of his dictation, Dr. Janumpally was "not sure about [the] correlation with the HPV virus vaccination given in December of last year." He admitted Ms. Silva to the hospital. Exhibit 2 at 92.

On April 17, 2007, she was hospitalized at Antelope Valley Hospital with a complaint of numbness in both of her legs and back pain lasting for one week. Although an MRI of her lumbar spine was normal, neurologist Dr. Janumpally found on admission that Ms. Silva's symptoms were "consistent with transverse myelitis." Exhibit 3 (Records from Antelope Valley Hospital) at 10-11, 16, 18, 21. Transverse myelitis is "characterized by abrupt onset of progressive weakness and

sensory disturbances in the lower extremities." During the early stages of this disease, a person will often experience "low back or abdominal pain and paresthesias of the legs." Robert M. Kleigman et al., Nelson Textbook of Pediatrics (18th ed. 2004) at 2529.

She was admitted for "close observation" and started on IV steroids and pain medication. Exhibit 3 at 16. On April 18, 2007, Ms. Silva had a MRI of her thoracic spine. The result of this MRI showed "[p]resumed discogenic disease at T10-11 and T11-12." Exhibit 3 at 39-40. She was released from the hospital on April 20, 2007, with a diagnosis of acute transverse myelitis. Exhibit 3 at 16. In follow-up, Ms. Silva saw Dr. Janumpally, who recounted that a "MRI of the thoracic spine also showed some disc disease at T10-T11, but spinal cord appeared to be normal." Dr. Janumpally's impression included acute transverse myelitis and depression. He stated that Ms. Silva's TM "seems to be stable with some improvement." Dr. Janumpally also recommended psychological counseling. Exhibit 2 at 89 (report dated April 23, 2007). Another follow-up visit with Dr. Janumpally took place on May 18, 2007. In this visit, Dr. Janumpally again described Ms. Silva as having transverse myelitis in her thoracic spine. Exhibit 2 at 86-87.

Ms. Silva received a second opinion from Dr. Niesen, a neurologist from Cedars-Sinai Medical Center, on June 16, 2007. Dr. Niesen noted that her "history and findings are consistent with idiopathic acute transverse myelitis." He recommended admitting her for further treatment and pain management. Exhibit 4 (records from Cedars-Sinai Medical Center) at 11. During this admission, Ms. Silva underwent several tests, including an MRI of the brain and MRIs of her spine. The brain MRI and the cervical spine MRI were normal. The thoracic spine MRI showed "lower thoracic degenerative disc disease" and the MRI of her lumbar spine revealed "mild degenerative changes of the lower lumbar spine." Exhibit 4 at 14-16, 28-29.

Following these tests and the continued care of Ms. Silva, Dr. Niesen stated that Ms. Silva did not suffer from TM. In a note, dated July 1, 2007, he stated that there "are no confirmatory studies for transverse myelitis." Exhibit 4 at 177. In the absence of test results showing TM, Dr. Nieson diagnosed Ms. Silva as having conversion disorder. Conversion disorder is "a mental disorder characterized by [symptoms including a loss or alteration of voluntary motor or sensory functioning suggesting physical illness] and having no demonstrable physiological basis." Dorland's at 556 (defining conversion disorder). She was discharged from Cedars-Sinai on Neurontin to manage her pain, and recommended for outpatient physical

therapy. She was also ordered to follow-up with child psychiatry and outpatient psychiatry, as well as a pediatric neurologist. Exhibit 2 at 31-34.[2]

On October 16, 2007, Ms. Silva's therapist, Alice C. Brown, referred Ms. Silva to AV Behavioral Medicine.[3] This person's note indicates that depression and conversion disorder were ruled out, although the basis for that conclusion is not given. Exhibit 5 (Records of AV Behavioral Medicine) at 5.

In a report from Ms. Brown dated April 9, 2010, Ms. Brown gave a detailed history of Erin and provided her assessment. Ms. Brown stated that Erin continues to see medical professionals and experience pain related to her chronic condition. While Erin has regained control over some of her limbs, she has experienced a loss of the sense of touch in her legs. Ms. Brown further reported that Erin suffered from alopecia, losing most of her body hair. She documented that, "Erin reports continual pain throughout her body, insomnia, a sense of restlessness with the intensity of pain and times of agitation and frustration." After evaluating Erin, Ms. Brown found that Erin did not demonstrate any signs of depression related to her symptoms. Exhibit 13 (letter from Alice C. Brown) at 1-2.

Ms. Silva filed a petition for compensation in the Vaccine Program on February 18, 2010. She alleged that this vaccine caused her to develop a "neurological demyelinating injury." Petition, ¶ 1-2. Ms. Silva filed a collection of medical records on March 16, 2010, and a status report on May 19, 2010, indicating that her records were complete.

On June 28, 2010, respondent filed her responsive report. Respondent noted that whether Ms. Silva suffered from TM or conversion disorder was not clear. Respondent argued that regardless of Ms. Silva's condition, whether TM or conversion disorder, none of Ms. Silva's treating doctors had linked any problem to the HPV vaccine, and she had not submitted a report from an expert retained for this litigation. Thus, respondent recommended that compensation be denied.

During a status conference held on October 14, 2010, the parties agreed that the first task was resolving whether Ms. Silva suffered from TM or conversion

[2] This discharge summary is particularly detailed about Ms. Silva's history.
[3] The handwritten signature of the person who saw Ms. Silva is not easily deciphered.

disorder. See order, filed Oct. 14, 2010; see also Broekelschen v. Sec'y of Health & Human Servs., 618 F.3d 1339, 1345-56 (Fed. Cir. 2010).[4]

A series of orders ensued, allowing Ms. Silva to submit an expert report or additional information as to how she wished to proceed with her case. Eventually, an order, dated July 26, 2011, required petitioner to file a report from an expert addressing whether she suffers from a conversion disorder or TM. This report was due by September 26, 2011. Petitioner was advised that in the absence of an expert report, her claim would be reviewed on the basis of the record. 42 U.S.C. § 300a---12(d)(2)(E); Vaccine Rule 8(d) ("The special master may decide a case on the basis of written submissions without conducting an evidentiary hearing.").

On September 26, 2011, petitioner filed a status report, indicating that she did not intend to submit any additional evidence. Accordingly, petitioner's claim for compensation is ready for adjudication.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), petitioner must prove either 1) that she suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to her vaccination, or 2) that she suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Ms. Silva suffered a "Table Injury."[5] Thus, she must pursue causation-in-fact.

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 by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records do not support petitioners' claim that HPV

[4] Subsequently the Federal Circuit confirmed petitioner's need to establish that she suffers from a particular disease. Lombardi v. Sec'y of Health & Human Servs., 656 F.3d 1343, 1353 (Fed. Cir. 2011) ("In the absence of a showing of the very existence of any specific injury of which the petitioner complains, the question of causation is not reached.").

[5] The Vaccine Injury Table does not associate any diseases with Gardasil. 72 Fed. Reg. 19937 (Apr. 20, 2007); see 42 C.F.R. § 100.3.

vaccine injured her, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion for either TM or conversion disorder.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that she suffered a "Table Injury" or that her injuries were "actually caused" 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