

OFFICE OF SPECIAL MASTERS

No. 02-1045V

February 24, 2006

Not for Publication

KEITH BERNARD HARRIS, Jr., By His Mother *
and Next Friend, BEVERLY WATSON *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *

Respondent. *

Peter H. Meyers, Washington, DC, for petitioner.
Julia W. McInerney, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

Petitioner filed a petition pro se on August 23, 2002 under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., alleging that her son Keith Harris (hereinafter,

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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). 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 clearly be an unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

“Keith”), was exposed to mercury from hepatitis B vaccine, weakening his immune system. This case was reassigned to the undersigned on November 25, 2003. On January 28, 2004, petitioner signed approval for law students under Prof. Peter Meyers at the George Washington University School of Law to represent her in this petition. Petitioner has never filed an expert report stating what illness, if any, Keith actually has and that hepatitis B vaccine (or allegedly DPT) is the cause of his illness. Petitioner’s counsel have spoken to three treating physicians and one expert neurologist without obtaining medical support for petitioner’s allegations.

During the February 23, 2006 telephonic status conference, Prof. Meyers stated that his client expressed the wish for the undersigned to issue a ruling based on the records.

DISCUSSION

To satisfy her burden of proving causation in fact, petitioner must offer "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury. A reputable medical or scientific explanation must support this logical sequence of cause and effect." Grant v. Secretary, HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992). Althen v. Secretary, HHS, 418 F. 3d 1274, 1278 (Fed. Cir. 2005); Agarwsal v. Secretary, HHS, 33 Fed. Cl. 482, 487 (1995); see also, Knudsen v. Secretary, HHS, 35 F.3d 543, 548 (Fed. Cir. 1994); Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, supra, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6th Cir. 1983), cert. denied, 469 U.S. 817 (1984).

Petitioner must show not only that but for the vaccine, Keith would not have had the injury, if there was one, but also that the vaccine was a substantial factor in bringing about his injury. Shyface v. Secretary, HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

This case is difficult for two reasons. First, the medical records are not clear about what illness, if any, Keith has. Secondly, the medical records do not substantiate a vaccine injury. Petitioner has been unable to provide a medical expert report from either Keith's treating physicians or an expert physician who has read the medical records and is willing to substantiate petitioner's allegations. Without evidentiary support for her allegations, petitioner cannot make out a prima facie case.

The undersigned has no alternative but to dismiss the petition.

CONCLUSION

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