

OFFICE OF SPECIAL MASTERS

No. 98-749V

June 21, 2006

CANDACE LOVETT, Administrator of the Estate of SENI LOVETT, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Hepatitis B vaccination three months before TM; URI nine days before TM; petitioner unlikely to prove causation from vaccine

ORDER TO SHOW CAUSE¹

Petitioner filed a petition dated September 25, 1998, under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that hepatitis B and diphtheria-tetanus vaccines her son Seni Lovett (hereinafter, "Seni") received caused him to have transverse myelitis (TM). Medical records have also diagnosed Seni with Guillain-Barre Syndrome (GBS).

¹ Because this order contains a reasoned explanation for the special master's action in this case, the special master intends to post this order 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 or designated substantive order 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.

FACTS

Seni was born on February 19, 1982. On September 25, 1996, he received hepatitis B vaccine and diphtheria-tetanus vaccine. Med. recs. at Ex. 15, pp. 6, 32.

On February 17, 1997, Seni went to Grady Memorial Hospital. He had been healthy until two weeks prior to admission (approximately February 3, 1997 or over three months post-vaccination) when he had upper respiratory (URI) symptoms of clear rhinorrhea, and mild cough for two to three days. Then, approximately five days prior to admission (or February 12, 1997), he had an episode of back pain and weakness in his lower extremities bilaterally, progressing to full paralysis by the day prior to admission (February 16, 1997). On physical examination, Seni's lower extremities were paralyzed with no reflexes. Sensory loss level was about L1. An MRI of Seni's spine showed swelling of the spinal cord at the T12-L1 level consistent with TM. There was enhancement of the lesion consistent with an acute change. Seni was discharged and transferred to Egleston Children's Hospital on February 25, 1997. Med. recs. at Ex. 16, pp. 2-3. (The undersigned has not been able to locate the Egleston records for February 25, 1997.)

Seni died from cardiopulmonary arrest due to TM on November 12, 2002. Med. recs. at Ex. 21, p. 1.

DISCUSSION

This is a causation in fact case. To satisfy her burden of proving causation in fact, petitioner must offer "(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. Secretary of HHS, 418 F. 3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary 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[.]”

In Capizzano v. Secretary of HHS, 440 F.3d 1274, 1325 (Fed. Cir. 2006), the Federal Circuit said “we conclude that requiring either epidemiologic studies, rechallenge, the presence of pathological markers or genetic disposition, or general acceptance in the scientific or medical communities to establish a logical sequence of cause and effect is contrary to what we said in Althen...”

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, supra, 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, Seni would not have had TM and died therefrom, but also that the vaccine was a substantial factor in bringing about his TM and death. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

In Stevens v. Secretary of HHS, No. 99-594V, 2006 WL 659525 (Fed. Cl. Spec. Mstr. Feb. 24, 2006), the undersigned ruled that hepatitis B vaccine can cause TM and did so in that case. The onset intervals after Ms. Stevens two hepatitis B vaccinations were eight and nine days, appropriate temporal periods for an immune reaction.

In the instant action, Seni's vaccinations occurred three months before he contracted TM. He was healthy before he contracted TM except for a URI two weeks before admission to the hospital. Onset of his back pain and weakness in his lower extremities was nine days after his URI. Seni's MRI showed enhancement of his spinal lesion, consistent with an acute change, not a chronic condition (thus consistent with the history of prior good health until the URI). It is glaringly apparent that the URI nine days before Seni's TM is the immune challenge occurring in the appropriate temporal period for Seni's neurologic reaction.

The undersigned doubts that petitioner will find an expert to provide a report that Seni's hepatitis B and Dt vaccinations, occurring three months before his TM, was the cause of his TM and subsequent death, particularly in light of the URI occurring nine days before the onset of his TM.

Petitioner is ORDERED TO SHOW CAUSE why this case should not be dismissed by **July 31, 2006.**

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master