

OFFICE OF SPECIAL MASTERS

Not for Publication

April 29, 2005

JORDAN DEAN MAZA, by his parents and *
natural guardians, JENNIFER MAZA and *
RUSSELL MAZA, *

Petitioners, *

v. *

No. 03-2653V

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

Respondent. *

Martin Rubenstein, Staten Island, NY, for petitioners.
James A. Reistrup, III, 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¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 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.

Petitioners filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., alleging that MMR vaccine administered to their son Jordan Maza (hereinafter, “Jordan”) caused him encephalitis, status epilepticus, and seizure disorder. Petition, p. 1.

A hearing was held on March 23, 2005. Testifying for petitioners was Dr. Mitchell I. Weiler, a pediatrician. Testifying for respondent was Dr. John MacDonald, a pediatric neurologist.

FACTS

Jordan was born on November 11, 1999. At the age of one year, he received MMR vaccine on November 13, 2000. Med. recs. at Ex. C.

Twenty-four days later, on December 7, 2000, at 2:00 p.m., Jordan was taken to South Nassau Communities Hospital. Mrs. Maza told the doctor that he had a fever for three days, starting December 4, 2000. She denied any other medical history. Jordan had 101.7° temperature. Mrs. Maza stated he had not been eating since the prior evening and was sleepy and lethargic. Med. recs. at p. 160.

At 2:15 a.m., Jordan had a seizure with right facial twitching and right arm twitching. His temperature was 99.4°. Med. recs. at 167. The pediatric medical history was that he had fever for three days with a maximum temperature of 102.8°. There were no other symptoms: no upper respiratory infection, no cough, no vomiting, no diarrhea. Both Jordan’s parents had gastroenteritis the prior week. Jordan had some lower oral intake during the last 24 hours with some lessened urinary output. His labs drawn were normal. He was diagnosed earlier with a viral illness. Jordan vomited once before the seizure started. The seizure lasted about 45 minutes. He did not have cyanosis. Med. recs. at 171.

On December 7, 2000, at 4:30 p.m., he had 102.8° temperature, but no other symptoms. His last bowel movement was two days prior. He was alert, crying, consolable, with a right ear that was mildly injected. The impression was a viral syndrome vs. left otitis media vs. rule out bacteremia. Med. recs. at 181.

On December 8, 2000, Jordan had 104° in the morning. Otherwise, he had no other symptoms: no upper respiratory symptoms, no nausea, no vomiting, no diarrhea. He tolerated feeding well. His right eye twitched as did his right cheek and right arm. He vomited once, moaning during the episode. The impression was a febrile focal seizure. Med. recs. at 184.

On December 9, 2000, Jordan was transferred to Winthrop University Hospital where he stayed until December 24, 2000. They diagnosed him with an unspecified non-arthropod-borne viral disease of the central nervous system. Med. recs. at 219.

The history given was that Jordan had a decreased appetite on Wednesday, December 6, 2000, which continued on December 7, 2000. He ate breakfast on Thursday, but would not eat lunch. He became increasingly irritable. His temperature reached 102°. He was brought to the emergency room at South Nassau where blood and urine work were done and he was diagnosed with viral symptoms and discharged. Later that night, at 1:30 a.m. on December 8, 2000, Jordan was crying and seizing. Med. recs. at 225.

On December 9, 2000, the resident's admission note states that Jordan had no prior medical history and was in his usual state of health until December 9th when he had a decrease in oral intake and became slightly less active. In the early morning of December 8th, he was crying and his eyes were twitching. His right arm and right side were twitching and he vomited twice. Med. recs. at 270.

On December 10, 2000, a history was given that Jordan had no significant prior medical history until three days previously when his oral intake declined. Dr. Paul Levy wrote that he doubted that Jordan had encephalitis as the primary cause of his illness because he had a very low white blood cell count in his cerebrospinal fluid. Med. recs. at 240.

Also on December 10, 2000, Jordan had a neurological consultation. The history both parents gave was that Jordan had a three-day history of fever, and a 45-minute right focal motor seizure. He was lethargic, arousable, irritable, and crying, with a rash. Med. recs. at 241.

On December 11, 2001, Jordan had an endocrinological consultation. He was well until two days prior to admission when he developed fever and a decreased appetite with a fine papular rash on his trunk. Med. recs. at 235.

An MRI done on December 11, 2000 showed signal abnormality and swelling in deep grey matter and in scattered gyri in the cerebral hemispheres bilaterally. There was some white matter signal abnormality seen in the occipital lobes bilaterally. The findings were compatible with a viral encephalitis. P's filing of May 27, 2004. An EEG dated December 11, 2000 was mildly abnormal. Ex. B, p. 68.

An MRI following up December 22, 2000 showed an improvement in swelling but persistent signal abnormality in scattered parietal gyri on the left and in the frontal gyri bilaterally particularly in the left hemisphere. He had persistent signal abnormality in the inferior right frontal lobe as well. Med. recs. at 250.

On January 12-20, 2001, Jordan returned to Winthrop University Hospital with a seizure and headache. He had noninfectious gastroenteritis and colitis. He had a history of persistent

temperature elevation (105-106°) since January 6, 2001. He was seen in the emergency room and diagnosed with right otitis media. Med. recs. at 392, 396.

On May 17, 2001, Jordan saw Dr. Vijaya L. Atluru, who wrote a history that Jordan was in his usual state of good health until the first week of December when he had an upper respiratory infection with high fever which he recovered from. On December 7, 2000, he had right focal motor seizures with eye deviation and twitching. He had a low grade temperature. The diagnosis was encephalitis and seizures. Med. recs. at 255, 256.

On June 28, 2001, Jordan had another MRI which Dr. Joseph L. Zito said was consistent with a history of leukoencephalopathy (foci of white matter signal abnormality). Med. recs. at 65.

In a letter to petitioners' counsel dated May 2, 2003, Dr. Atluru stated that Jordan's diagnosis was post-viral encephalitis. His last MRI and EEG were normal. Jordan's anti-convulsant Tegretol was discontinued in March 2003. During his last neurological evaluation on January 29, 2003 at age 3.3. years, Jordan had a normal neurodevelopmental exam. His final diagnosis was encephalitis–seizure disorder–post viral. He “considered the possibility” of an MMR vaccine-related encephalitis. Med. recs. at 483.

TESTIMONY

Dr. Weiler, a general pediatric practitioner, testified for petitioners, that MMR caused Jordan's encephalitis. He stated there was no proof that a virus caused it. Tr. at 5. The first examination of Jordan's cerebrospinal fluid showed no abnormalities, i.e., a viral culture. *Id.*

On cross-examination, he attributes the first date of symptomatology to December 7, 2000, which is 24 days after Jordan received MMR vaccine. Since there is no proof Jordan had a

virus or any other cause, Dr. Weiler stated the cause must be the MMR vaccine. Tr. at 8. Dr. Weiler is not sure of the cause of Jordan's 2001 episode. *Id.* It was important to Dr. Weiler that Jordan's encephalitis occurred within 30 days of his MMR vaccination, and he thought that was important because the Table injury of idiopathic thrombocytopenic purpura after MMR is from 7 to 30 days. Tr. at 10. (The Table injury of MMR-encephalitis is 5 to 15 days.)

Dr. John MacDonald, a pediatric neurologist, testified for respondent that MMR is not the cause of Jordan's encephalitis. A normal white blood cell count in the cerebrospinal fluid does not rule out viral encephalitis.

DISCUSSION

Jordan did not have his encephalitis within the Table time of 5-15 days after receiving MMR vaccine. Therefore, petitioners must prove that MMR caused his encephalitis under the standard of causation in fact. To satisfy their burden of proving causation in fact, petitioners 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). Agarwal 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).

Petitioners must not only show that but for the vaccine, Jordan would not have had encephalitis, but also that the vaccine was a substantial factor in bringing about his encephalitis. Shyface v. Secretary, HHS, 165 F.3d 1344 (Fed. Cir. 1999).

In this case, Dr. Weiler, a pediatrician, offers proof of causation that goes directly against the legal requirements enunciated in Grant. He states that MMR administered 24 days before Jordan's encephalitis must have caused it because he cannot find another reason for it, i.e., no viral illness or structural damage. But this is not affirmative proof of causation. It is just an absence of other causes. This proof fails to meet petitioners' burden to make a prima facie case.

Dr. Weiler's second basis for his opinion of causation is that Jordan's encephalitis occurred 24 days after vaccination, which is within 30 days of vaccination. When asked why this meant causation in fact, he cited to the Vaccine Injury Table, where one Table injury, idiopathic thrombocytopenic purpura, is deemed caused by MMR if it occurs within 7-30 days of vaccination. Jordan does not have idiopathic thrombocytopenic purpura. And Jordan's encephalitis is not a Table injury because it did not occur within the Table time of 5-15 days after MMR vaccination. Dr. Weiler's maintaining that an occurrence of encephalitis within 30 days of MMR vaccination proves causation in fact has no valid basis.

It is legally irrelevant in a causation in fact case in which petitioners have failed to make a prima facie case whether or not, as Dr. MacDonald, respondent's pediatric neurologist, testified a viral illness caused Jordan's encephalitis. Petitioners have failed to make a prima facie case that MMR caused in fact Jordan's encephalitis.

The undersigned extends her sympathy to petitioners concerning Jordan's repetitive hospitalizations for encephalitis, but, according to Dr. Atluru, his condition seems quite improved, which is a great relief.

CONCLUSION

This case 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.

IT IS SO ORDERED.

Date

Laura D. Millman
Special Master