

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

FIRAS MAAYAH,

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No. 10-254V

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Special Master Christian J. Moran

Petitioner,

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Filed: August 31, 2010

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entitlement; trivalent flu vaccine;

Respondent.

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Transverse Myelitis;

*Sol P. Ajalat, Ajalat & Ajalat, North Hollywood, CA for petitioner;
Lynn E. Ricciardella, United States Dep't of Justice, Washington, D.C. for respondent.*

UNPUBLISHED RULING ON ENTITLEMENT*

On April 22, 2010, Firas Maayah filed a petition for compensation alleging that he suffered from Transverse Myelitis (TM) as a result of a trivalent flu vaccine, which he received on October 29, 2008. He seeks compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (2006).

Respondent has chosen not to contest entitlement. Respondent stated that although respondent does not believe that a preponderance of the evidence supports the conclusion that the trivalent flu vaccine administered to Mr. Maayah on October 29, 2008, actually caused his TM, respondent will not expend further resources to contest entitlement in this case. Resp't Rept., filed August 20, 2010, at 6.

* Because this published 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 banned 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).

Special masters may determine whether a petitioner is entitled to compensation based upon the record. A hearing is not required. 42 U.S.C. § 300aa-13; Vaccine Rule 8(d).

Although the Vaccine Act contains a table in which certain injuries are presumed to be caused by certain vaccines, petitioner may not take advantage of any presumption because the flu vaccine is not associated with any injury. 42 C.F.R. § 100.3(a); see also 70 Fed. Reg. 19092 (adding trivalent influenza vaccine to the table). Under these circumstances, petitioner bears the burden of establishing that the flu vaccine caused the injury for which she seeks compensation. Althen v. Sec'y of Health and Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005). Proof of medical certainty is not required; a preponderance of the evidence suffices. Bunting v. Sec'y of Health and Human Servs., 931 F.2d 867, 873 (Fed. Cir. 1991).

A preponderance of the evidence shows that the trivalent flu vaccine caused petitioner's TM. His treating neurologist and petitioner's expert report agree with the diagnosis of TM. Exhibit 2 at 2, 4 (Dr. Kinsbourne). Dr. Kinsbourne presents an opinion that satisfies the Althen factors. Exhibit 2 at 4 (Dr. Kinsbourne).

As petitioner points out, Mr. Maayah had no antecedent illness or other discernible cause of his TM. Pet Amended Petition at 2. A preponderance of the evidence also suggests that the onset of Mr. Maayah's symptoms fall within the time expected by medical science.

Furthermore, respondent has opted not to contest this matter further by obtaining an expert or by challenging the evidence contained in the record. Therefore, after considering the evidence, the Court finds that petitioner has established that he is entitled to compensation.

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

IT IS SO ORDERED.

Christian J. Moran
Special Master