

OFFICE OF SPECIAL MASTERS

No. 99-569V

August 30, 2006

Not for Publication

DANEKA NOELANI WHEATLEY, by *
MARILYN L. WHEATLEY, parent and *
natural guardian, *

Petitioner, *

v. *

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

Respondent. *

Clifford J. Shoemaker, Vienna, VA, for petitioner.
Vincent J. Matanoski, Washington, DC, for respondent.

Hepatitis B vaccine; causation;
decision on the record

Denise K. Vowell, Special Master

DECISION¹

On August 4, 1999, petitioner Marilyn Wheatley, *pro se*, timely filed a petition under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*, [“the Program”] on behalf of the estate of her daughter, Daneka Noelani Wheatley [“Daneka”]. The petition alleged that the hepatitis B vaccine caused Daneka an unspecified injury. Her current attorney entered an appearance as counsel of record on December 21, 1999.

Records filed on May 2, 2006, establish that Daneka received three hepatitis B vaccinations: the first on February 2, 1994; the second on April 7, 1994; and the third on July 6,

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

1994. See Petitioner's Exhibit ["Pet. Ex."] 3, p. 21. In early August 1994, Daneka became ill, and on August 19, 1994, a preliminary diagnosis of hepatoblastoma² was confirmed. Pet. Ex. 4, pp. 45-46. Tragically, Daneka succumbed to this disease on January 1, 1995. Pet. Ex. 4, p. 17; Pet. Ex 1, p. 2.

DISCUSSION

In order to prevail under the Program, petitioner must prove either a "Table Injury"³ or that a vaccine listed on the Table was the cause of an injury. Hepatoblastoma is not a condition listed on the Vaccine Injury Table; therefore petitioner must prove by a preponderance of the evidence that the vaccinations were the cause of this disease. While the petition and medical records establish that Daneka received the hepatitis B vaccine and that she subsequently developed hepatoblastoma, petitioner did not proffer medical records or an expert opinion causally linking the condition to the vaccine.⁴

On June 19, 2006, acknowledging that she had been unable to find an expert to opine that the Hepatitis B vaccinations had caused her daughter's illness, petitioner filed a motion for judgment on the record. On June 23, 2006, respondent filed a response indicating that there were no objections to a judgment on the record, but did not necessarily endorse the proposed entitlement decision attached to petitioner's motion.

To satisfy her burden of proving causation, 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. Sec'y, HHS*, 956 F.2d 1144, 1148 (Fed. Cir. 1992); see also, *Capizzano v. Sec'y, HHS* 440 F.3d 1317 (Fed. Cir. 2006); *Althen v. Sec'y, HHS*, 418 F.3d 1274, 1278 (Fed. Cir. 2005); *Agarwal v. Sec'y, HHS*, 33 Fed. Cl. 482, 487 (1995).

² Hepatoblastoma is a form of liver cancer occurring in infants and young children. *Mosby's Medical Dictionary* at 877 (7th ed. 2006).

³ A "Table Injury" is an injury listed on the Vaccine Injury Table corresponding to the vaccine received within the time frame specified. 42 C.F.R. § 100.3 (2005).

⁴ On July 10, 2002, the special master formerly assigned to this case ordered petitioner to file an expert report by September 30, 2002. Petitioner responded with a status report on July 19, 2002, requesting that the case be stayed. While no formal action was taken on this request, there were no additional filings until the case was reassigned to me on February 8, 2006. The informal stay was formally lifted on April 4, 2006, and petitioner was ordered to file medical records by April 26, 2006 and to file a status report by May 26, 2006, indicating whether petitioner intended to pursue her claim for compensation. In status reports filed on May 2 and May 25, 2006, petitioner indicated that she was attempting to find an expert to support her theory of causation. Petitioner's counsel orally reported on June 9, 2006, that those efforts were unsuccessful.

Without more, "evidence showing an absence of other causes does not meet petitioner's 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). An award may not be based on petitioner's claims alone. 42 U.S.C. § 300aa-13(a)(1).

CONCLUSION

A special master can only authorize compensation when a medical condition either falls within one of the "Table Case" categories or when some reliable evidence causally connects the vaccine with the injury. No such evidence exists in the record before me. Therefore, the petition for compensation is DENIED. 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 with this decision.⁵

IT IS SO ORDERED.

August 30, 2006

Date

s/Denise K. Vowell

Denise K. Vowell

Special Master

⁵ 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.