

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-700V

Filed: November 18, 2011

CAROL ANDERSON, as parent and
Guardian of CARSON ANDERSON,
a minor,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Special Master Zane

Ruling on the record; diphtheria-tetanus
acellular pertussis (DTaP) and influenza
vaccines; seizure disorder; infantile spasms.

Sheila A. Bjorklund, Lommen Abdo Law Firm, Minneapolis, MN, for Petitioner;
Debra A. Filteau-Begley, United States Dep't of Justice, Washington, D.C., for Respondent.

UNPUBLISHED DECISION DENYING COMPENSATION*

This matter is before the undersigned on Petitioner’s Motion for a Ruling on the Record. As explained below, a review of the record as a whole demonstrates that Petitioner is not entitled to an award of compensation.

Petitioner originally filed a petition for compensation on October 15, 2010, under the National Childhood Vaccine Injury Act of 1986, as amended (“the Act”), on behalf of her minor child, Carson Anderson (“Carson”). Petitioner alleged that Carson suffered and continues to suffer from infantile spasms and/or a seizure disorder that was caused in fact by his receipt of the diphtheria-tetanus-acellular pertussis (DTaP) and influenza vaccines administered to him on

*Because this 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).

November 9, 2007. Petition at 1-2 [Dkt No. 1]. In a status report filed on October 12, 2011, counsel for Petitioner requested a ruling on the record as it now stands, and acknowledged that Petitioner “is unable to secure the report of a medical expert and therefore relies upon the contemporaneous medical records and statements therein by her minor son’s treating physicians to support her claim for compensation...” Pet’r Status Rep’t filed Oct. 12, 2011.

Respondent filed a Rule 4 report on October 21, 2011, responding to Petitioner’s motion for ruling on the record [ECF No. 24]. In that report, Respondent noted that the medical records indicated that although Carson had been taken to the hospital on November 21, 2007, for seizures, he did not appear to have suffered subsequent seizures. Moreover, Respondent also indicated that none of Carson’s treating doctors had opined that his seizures and/or infantile spasms were caused or significantly aggravated by his vaccinations and that Petitioner had not submitted an expert report. Respondent also noted that “[w]ithout a ‘sound and reliable’ medical or scientific explanation proffered by an expert or treating physician, a medical theory causally connecting the vaccination and injury cannot be established.” Resp’t’s Rule 4 Rpt. at 8.

Having considered the parties’ position regarding Petitioner’s motion, the undersigned hereby grants Petitioner’s motion for ruling on the record. Accordingly, the undersigned makes this ruling based on the written record. *See* Vaccine Rule 8(d).

To be awarded compensation under the Act, a petitioner must prove either: 1) that he suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of his medical problems were actually caused by the vaccine. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). Petitioner may not be awarded compensation based on his statements alone. 42 U.S.C. § 300aa-13(a)(1). Rather, the petition must be supported by either the medical records or by the opinion of a competent physician. *Id.*

An examination of the filed medical records, however, did not uncover any evidence that Carson suffered a “Table Injury.” Furthermore, the medical records do not support Petitioner’s claims because none of Carson’s treating physicians opined that his seizures and/or infantile spasms were caused or significantly aggravated by his vaccinations. Because the medical records do not support Petitioner’s claim, a medical opinion must be offered to satisfy Petitioner’s burden of proof. But, the records do not contain a medical expert’s opinion indicating that Carson’s medical conditions were caused by the vaccinations he received. Petitioner has acknowledged that she will not be offering an expert medical opinion.

Based on the review of the record as a whole as discussed above, Petitioner has failed to prove by a preponderance of the evidence that Carson suffered a “Table Injury” or that his condition was “actually caused” by a vaccination. As a result, Petitioner’s request for compensation must be and hereby is DENIED. In the absence of a motion for review, the Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.

/s/ Daria J. Zane
Daria J. Zane
Special Master