

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-115V

December 15, 2009

To be Published

RADHAKRISHNA KUKKILLAYA as *
GUARDIAN and CONSERVATOR for *
MANORAMA A. KUKKILLAYA, *
Protected Person, *

Petitioner, *

v. *

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

Respondent. *

J. Nicholas Barth, Charleston, WV, for petitioner.
Glenn A. MacLeod, Washington, DC, for respondent.

Entitlement: influenza vaccine;
four days later, Guillain-Barré
syndrome; respondent asks for
ruling on the record

MILLMAN, Special Master

RULING ON ENTITLEMENT¹

Petitioner filed a petition on February 24, 2009, under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that influenza vaccine administered on

¹ 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.

November 27, 2007 caused his mother, Manorama Kukkillaya, Guillain-Barré syndrome (GBS) whose onset was four days later. Petitioner was tested for other possible causes besides vaccination, including campylobacter jejuni. No other cause was found.

Petitioner filed as Ex. 19 the affidavit of Dr. Joby Joseph, a neurologist, in support of petitioner's allegations.

During the Rule 4(b) Conference on April 24, 2009, respondent requested suspension of filing a Rule 4 Report which was granted by Order.

During a telephonic status conference on June 19, 2009, respondent was examining the 230-page demand petitioner had made.

Further negotiations and settlement conferences resulted in a status conference on December 9, 2009, during which respondent's counsel stated that respondent does not intend to defend the issue of entitlement in this case and asked for a ruling on the record.

DISCUSSION

This is a causation in fact case. To satisfy his 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, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. *Id.* at 1148

Petitioner must show not only that but for the vaccine, his mother would not have had GBS, but also that the vaccine was a substantial factor in bringing about her GBS. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

Respondent has not filed a Rule 4 Report in this case and intends not to defend on entitlement, hoping to resolve damages and file a proffer. Petitioner has proved causation in fact.

CONCLUSION

Petitioner is entitled to reasonable compensation. The next telephonic status conference is set for Friday, January 15, 2010, at 11:30 a.m. (EST) to continue resolving damages.

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master