

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-0145V

Filed: August 8, 2011

Not to be Published

CONNOR MICHAEL GOWAN, a minor, *
by his parents and natural guardians, *
CHRISTOPHER EBER GOWAN and *
DIANE CONNELLY GOWAN *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Petitioners' Motion for a Decision
On the Record; Insufficient Proof
of Causation; Vaccine Act
Entitlement

DECISION¹

Golkiewicz, Special Master.

On March 10, 2008, Christopher and Diane Gowan ("petitioners") filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program"),² alleging that various vaccinations injured Connor Michael Gowan ("Connor").

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

On March 17, 2008, petitioners were ordered to file the statutorily required medical records. 42 U.S.C. § 300aa-11(c)(2). Petitioners responded by filing medical records on September 15, 2008. On September 21, 2010, petitioners were informed the Omnibus Autism Proceeding (“OAP”) test cases had been decided and were ordered to file a statement within 30 days informing the court if petitioners wished to proceed with their claim. Petitioners responded on October 18, 2010 and filed a request that their case be decided on the record as it now stands. Because the information in the record does not show entitlement to an award under the Program, this case is dismissed.

I. The Omnibus Autism Proceeding

This case is one of more than 5,400 cases filed under the Program in which petitioners alleged that conditions known as “autism” or “autism spectrum disorders” (“ASD”) were caused by one or more vaccinations. A detailed history of the controversy regarding vaccines and autism, along with a history of the development of the OAP, was set forth in the six entitlement decisions issued by three special masters as “test cases” for two theories of causation litigated in the OAP and will not be repeated here.³

Ultimately, the Petitioners’ Steering Committee (“PSC”), an organization formed by attorneys representing petitioners in the OAP, litigated six test cases presenting two different theories on the causation of ASDs. The first theory alleged that the measles portion of the measles, mumps, rubella vaccine could cause ASDs. That theory was presented in three separate Program test cases during several weeks of trial in 2007. The second theory alleged that the mercury contained in thimerosal-containing vaccines could directly affect an infant’s brain, thereby substantially contributing to the causation of ASD. That theory was presented in three additional test cases during several weeks of trial in 2008.

Decisions in each of the three test cases pertaining to the PSC’s first theory rejected the petitioners’ causation theories. *Cedillo*, 2009 WL 331968, *aff’d*, 89 Fed. Cl. 158 (2009), *aff’d*, 617 F.3d 1328 (Fed. Cir. 2010); *Hazlehurst*, 2009 WL 332306, *aff’d*, 88 Fed. Cl. 473 (2009), *aff’d*, 604 F.3d 1343 (2010); *Snyder*, 2009 WL 332044, *aff’d*, 88 Fed. Cl. 706.⁴ Decisions in each of the three “test cases” pertaining to the PSC’s second theory also rejected the petitioners’ causation theories, and petitioners in each

³ The Theory 1 cases are *Cedillo v. Sec’y, HHS*, No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Hazlehurst v. Sec’y, HHS*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Snyder v. Sec’y, HHS*, No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are *Dwyer v. Sec’y, HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *King v. Sec’y, HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. Sec’y, HHS*, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

⁴ Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

of the three cases chose not to appeal. *Dwyer*, 2010 WL 892250; *King*, 2010 WL 892296; *Mead*, 2010 WL 892248. Thus, the proceedings in these six test cases are concluded. Petitioners remaining in the OAP must now decide whether to pursue their cases, and submit new evidence on causation, or take other action to exit the Program. The petitioners in this case have requested a ruling on the record as it now stands.

II. Medical Records⁵

Connor was born on January 7, 2005. Petitioners' Exhibit ("P Ex.") 1. He was delivered at term with an Apgar score of 8 at one minute and 9 at five minutes. P Ex. 1 at 2. Connor received routinely administered childhood vaccinations between January 7, 2005 and September 20, 2009. P Ex. 2. In particular, on May 11, 2005, Connor received his second dose of the following vaccinations: Diphtheria-Tetanus-acellular-Pertussis ("DTaP"), Polio ("IPV"), hemophilus influenzae type b ("Hib"), pneumococcal conjugate ("Prenar"). Approximately one week after receiving these vaccinations, Connor's mother called the office of his primary care physician, Dr. Greg Cabrera. According to Dr. Cabrera's notes, Connor's mother was concerned that he had a knot at the vaccine injection site but stated that he had no fever or streaking or warmth at the site. P Ex. 5 at 2. Dr. Cabrera recommended that she apply warm compresses. P Ex. 5 at 2. Other than this common reaction, there is no mention of any adverse effects from Connor's vaccinations in the medical records.

On January 11, 2007, Connor's mother raised concern about his development during a wellness visit with Dr. Cabrera. P Ex. 17 at 2. Dr. Cabrera referred Connor to Dr. Amy Pakula, a Neurologist at the Marcus Institute, an affiliate of Kennedy Krieger Institute at Emory University, for evaluation. See P Ex. 11 at 1. Dr. Pakula evaluated Connor on February 7, 2007 and determined that Connor exhibited symptoms on the mild end of the Pervasive Development Disorder (PDD) Spectrum and diagnosed Connor with Pervasive Development Disorder. P Ex. 11 at 5. However, the records do not contain any evidence suggesting a causal link between Connor's vaccinations and his diagnosis of PDD.

III. Causation in Fact

To receive compensation under the Program, petitioners must prove either 1) that Connor suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Connor suffered an injury that was actually caused by a vaccine. See § 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Connor suffered a "Table Injury." Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Connor's autism spectrum disorder was vaccine-caused.

⁵ I will not discuss the medical records in detail in this decision; however I have reviewed and considered all of the medical records and evidence filed by petitioners.

The Act at 42 U.S.C. § 300aa-13(a) provides that the special master “may not make a finding based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” In this case, because there are insufficient medical records supporting petitioners’ claim, a reliable medical opinion must be offered in support. Petitioners, however, have offered no such opinion. Thus, this Petition remains unsupported by either medical records or medical opinion. In accordance with section 13(a), the undersigned has no option but to **deny** petitioners’ claim for want of proof.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Connor suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

Gary J. Golkiewicz
Special Master