

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-664V

January 22, 2010

Not to be Published

LAVORIS WILLIAMS and ROSE WILLIAMS, *
on behalf of their son, MATTHEW WILLIAMS, *

Petitioners, *
*

v. * Entitlement: motion to

SECRETARY OF THE DEPARTMENT OF * dismiss; viral cause; not
HEALTH AND HUMAN SERVICES, * ADEM; onset too long;

Respondent. * ruling on the record

Sherry K. Drew, Chicago, IL, for petitioner.
Rebecca J. Trinrud, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

Petitioners filed a petition on October 6, 2009 under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that acellular DPT, Menactra, and varicella

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). 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 is filed, the parties have 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.

vaccines administered on April 19, 2008 caused their son Matthew viral encephalitis. Initially, petitioners were pro se. On November 16, 2009, petitioners' counsel filed a motion for leave to appear, and she was substituted for the pro se petitioners under CFC Rule 83.1(c)(4).

On November 24, 2009, during the first status conference, held under Vaccine Rule 4(b), petitioners' counsel stated she needed to get extensive medical records.

On November 24, 2009, the undersigned issued an Order authorizing petitioners' counsel to subpoena medical records as well as school records. The undersigned suspended the deadline for the filing of respondent's Rule 4(c) Report.

On January 22, 2010, the parties and the undersigned had another telephonic status conference. Petitioners' counsel stated that she had received 4,000 pages of medical records which she had not filed. These records showed that Matthew did not have ADEM and that he seemed to have had a virus. Moreover, the onset of his illness was too far removed from the date of his vaccinations to show the temporality appropriate to argue vaccine causation. Petitioners' counsel stated she had discussed the weaknesses of the case with petitioners and they were in agreement with her suggestion that they move to dismiss. Petitioners' counsel orally moved to dismiss. The undersigned grants petitioners' motion.

FACTS

Matthew was born on July 10, 1995.

On April 19, 2008, when Matthew was 12 years old, he received acellular DPT, Menactra, and varicella vaccines.

DISCUSSION

To satisfy their burden of proving causation in fact, petitioners must prove by preponderant evidence "(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[.]"

Without more, "evidence showing an absence of other causes does not meet petitioners' 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. *Id.* at 1148.

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

In the instant action, however, petitioners are not able to provide an expert opinion to satisfy the three Althen prongs. Matthew does not appear to have had ADEM, but does appear to have had an injury due to a virus. Petitioners' counsel also notes that the onset of Matthew's illness seems to be too long to merit an argument for vaccine causation. Recognizing the weaknesses in their case, petitioners moved through their counsel to dismiss the case. The undersigned grants their motion.

Petitioners have failed to make a prima facie case that acellular DPT, Menactra, and varicella vaccinations caused Matthew's illness.

CONCLUSION

Petitioners' petition is dismissed with prejudice. 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 herewith.²

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master

² 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.