In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
E-Filed: May 16, 2011; Re-Issued: June 20, 2011[1]
No. 06-710 V

JUANITA A. COLEMAN,	)	
	)	PUBLISHED
	)	
Petitioner,	)	Hepatitis B Vaccine; onset; rash;
	)	blisters; linear IgA disease.
v.	)	
	)	
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

William Dobreff, Clinton Township, MI, for petitioner.
Althea Walker Davis, Washington, D.C., for respondent.

RULING REGARDING FACTUAL FINDINGS[2]

[1] The Ruling was re-issued to correct two factual errors that were brought to the attention of the undersigned by respondent's counsel during the status conference conducted on June 15, 2011. First, the previously issued Ruling erroneously referenced the referral of Ms. Coleman's conduct to the Inspector General of Health and Human Services rather than to the Office of the Attorney General in the state of Michigan, which is where the referral was made. Second, the Ruling erroneously stated that Ms. Coleman's conduct involved Medicare fraud, rather than Medicaid fraud.

[2] Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends 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. **Because the period**

Campbell-Smith, Chief Special Master

On October 12, 2006, petitioner Juanita A. Coleman ("Ms. Coleman") filed a petition pro se pursuant to the National Vaccine Compensation Program[3] (the Act or the Program). Ms. Coleman alleges that she experienced the onset of a "skin reaction" less than one week after she received a hepatitis B vaccination on October 20, 2003. Ms. Coleman asserts that there is "extensive support of the onset" of her vaccine reaction in her medical records. P's Mem. at 5.

On March 13, 2007, five months after she filed her petition, Ms. Coleman retained counsel, who in turn entered his appearance in this case. Over the next year, Ms. Coleman continued to file medical records, affidavits, and other documents in support of her claim.

Nearly seven months later, on October 31, 2007, Ms. Coleman's counsel filed a status report, additional medical records, an affidavit executed by Ms. Coleman, as well as several other documents. In her affidavit, Ms. Coleman explained that she had obtained treatment from University Dermatology in "January or February of 2004," under her sister's name, Sheila Dunn, using her sister's Medicaid card. P's Ex. 19 at 322. Ms. Coleman first obtained treatment in this manner because she did not have insurance. Id. Aware that use of her sister's Medicaid card "was wrong" and that she could face criminal charges, Ms. Coleman nonetheless elected to move forward with her vaccine claim.[4] Id. Ms. Coleman continued to file medical records, additional affidavits, and documentation identifying her mother and her sister, including Ms. Dunn's identification card, and the birth certificates of Ms. Coleman, Ms. Dunn, and Ms. Coleman's mother, Irene Davenport. P's Exs. 23-28, 29, 33, 36.

A fact hearing was held on March 24, 2010, in Washington, D.C. Ms. Coleman and her daughter Davina Coleman testified.

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for petitioner to request redaction expired without petitioner action prior to the re-issuance of the decision, the re-issued decision will issue promptly.

[3] The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. § 300aa-10 through § 300aa-34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

[4] Ms. Coleman's actions were drawn to the attention of the Office of the Attorney General in the state of Michigan. The Office of the Attorney General ultimately declined to file charges. See Order dated July 15, 2008; P's Status Report dated Sept. 22, 2008.

Following the fact hearing, Ms. Coleman filed additional exhibits including (1) photographs of her rash, (2) transcriptions of previously filed medical records, (3) records from Joy-Dex Pharmacy, (4) records from Superior Medical Education, (4)affidavits from Rosemary Guttenberg, RN, (5) records from Herman Kiefer medical center, and (6) records from CVS Pharmacy. Both parties filed proposed findings of facts as well as a Joint Stipulation of Facts.

This case is now ready for adjudication on the factual issues.

I. Discussion

A. The Documentary Record

On September 2, 2003, Ms. Coleman applied for enrollment in the emergency medical technician ("EMT") training program offered through Superior Medical Education, Inc. P's Ex. 48 at 898; Joint Stip. at 1, ¶1. Pursuant to the EMT training requirements, Ms. Coleman received a hepatitis B vaccination at the Oakland County Health Department on October 20, 2003. P's Ex. 48 at 912; P's Aff. at ¶2; Joint Stip. at 1, ¶2.

At the time she received the hepatitis B vaccination, Ms. Coleman was employed as a home health care aide by several agencies. Joint Stip. at 1, ¶3; see e.g., P's Exs. 24, 30-32. Ms. Coleman continued to work as a home health care aide on a regular basis in 2003 and 2004, following her receipt of the hepatitis B vaccination. Id.

In late November 2003, specifically, between November 15 and November 29, 2003, Ms. Coleman worked three 12-hour shifts at Henry Ford Hospital and three 12-hour shifts on an ambulance service as part of her clinical training in the EMT training program. P's Ex. 48 at 907; Joint Stip. at 2, ¶4.

On December 26, 2003, Ms. Coleman received medical treatment at the Detroit Receiving Hospital emergency room. P's Ex. 33 at 516-17; P's Aff. at ¶13; Joint Stip. at 2, ¶6. The record of this visit states that Ms. Coleman presented with a diffuse rash on her shoulder, neck, abdomen, and inner thighs that had been present "for over 10 days." Id. The rash started with a small lesion on her left forearm, which she scratched, and then wherever she scratched, a rash developed. Each lesion started as a small papule, and then developed into a raised crusted sore with pustular weeping or golden exudates. Id. Ms. Coleman was diagnosed with impetigo, possibly related to a bug bite, and was given a prescription for Keflex. The record reflects that Ms. Coleman was advised to take precautions because she was considered infectious to others. Id. at 517. There is no mention in the emergency room record that Ms. Coleman had received a hepatitis B

vaccination more than nine weeks earlier. The record also does not reflect that the rash began approximately eight weeks earlier. The record of this emergency room visit reflects the first time Ms. Coleman received treatment from a physician, nurse, or other medical personnel from the time she received the hepatitis B vaccination on October 20, 2003, to December 26, 2003. Joint Stip. at 2, ¶5.

On January 2, 2004, Ms. Coleman received medical treatment from a dermatologist at University Dermatology using her sister's Medicaid card. P's Ex. 29. Because Ms. Coleman was using Ms. Dunn's card to obtain treatment, the records of Ms. Coleman's treatment at University Dermatology contain her sister's name and her sister's date of birth. Id.; P's Ex. 19 at 322-23. Records from that visit indicate a two-to-three week history of a "rapidly progressive, very itchy blistering rash" that started on Ms. Coleman's back and then spread to the rest of her body. Id.; P's Ex. 29 at 348. Ms. Coleman denied any prior treatment for the rash. Id. She reported that she was taking Benadryl and Sudafed and had been taking Prednisone for asthma but that she discontinued the Prednisone after the rash started. Id. A biopsy was conducted, and Ms. Coleman was given prescriptions for Doxycycline, Nicotinamide, Prednisone, Zantac, Atarax, and Clobetasol (mediations used to treat allergic, infectious or inflammatory skin conditions) under her sister's name. Id. The working diagnosis was bullous pemphigoid versus linear IgA disease.[5] Id. There is no mention in these records of the hepatitis B vaccine Ms. Coleman received approximately eleven weeks earlier or the onset of a rash one week following vaccination.

On January 7, 2004, Ms. Coleman returned to University Dermatology where she continued to receive treatment using her sister's Medicaid card. P's Ex. 29 at 350. Ms. Coleman's condition was much improved and she had very few new lesions. Id. Ms. Coleman was assessed with linear IgA disease that was improving with treatment. Id. Ms. Coleman's Prednisone dosage was adjusted, and she was directed to return to the clinic in one week. Id.

On January 14, 2004, Ms. Coleman returned to University Dermatology again seeking treatment with her sister's Medicaid card. P's Ex. 29 at 351. The records indicate that Ms. Coleman's condition was improving with treatment, but that she had persistent red plaques on her arms and chest that were responsive to the Clobetasol treatment. There were no blisters evident. Id. Ms. Coleman was advised to decrease her Prednisone dosage and to begin taking Dapsone and Tums. Id.

[5] Linear IgA Dermatosis is an autoimmune subepidermal vesiculobullous disease that may be idiopathic or drug-induced. Children and adults are affected, with disease of the former historically referred to as chronic bullous dermatosis of childhood. The clinical presentation is heterogeneous and appears similar to other blistering diseases. http://emedicine.medscape.com/article/1063590-overview.

Ms. Coleman returned to University Dermatology on February 4 and February 11, 2004. P's Ex. 29 at 352-53. She had been taking 10 mg of Prednisone at the time of the February 4, 2011 visit, but when she developed new lesions, her dosage was increased to 40 mg. Id. at 352. Blood tests were ordered, and Ms. Coleman was instructed to continue taking her medications as prescribed. Id. On February 11, 2004, Ms. Coleman reported that she had stopped taking Prednisone and had begun taking Dapsone. She also reported that she had failed to get the blood tests ordered during the last visit. Id. at 353. Ms. Coleman's condition was described as improving and she was instructed to return to the clinic in one month or as needed if the blisters reappeared.

On March 1, 2004, Rosemary Gutenberg, a registered nurse employed by the Macomb County Health Department, Southwest Office, prepared a VAERS Report regarding Ms. Coleman's alleged vaccine reaction. Joint Stip. at 2, ¶ 9; P's Ex. 37. The report indicated that Ms. Coleman received a hepatitis B vaccination on October 20, 2004[6] in her left deltoid and that she developed hives beginning on October 27, 2003. Id. The report stated that the rash began as small bumps that increased in size and then became blisters; one blister was documented as measuring 30 x 40 mm. The report also documents a diagnosis of "linear IgA Bulbous [sic] Disease" and lists the medications that Ms. Coleman had been taking since January 2004. Joint Stip. at 3, ¶9; P's Ex. 44.

According to Ms. Gutenberg's affidavit, she completed the VAERS form and mailed it to the VAERS coordinator at Mt. Clemens who then forwarded the form to Dr. Lokar. P's Ex. 49 at 945. The initials of Dr. Lokar, as the "responsible physician," appear near the date of "3/3/04," indicating that Dr. Lokar "signed off on the report." Id. In her affidavit, Ms. Gutenberg explains that generally, the "information on the VAERS form comes from the person reporting the injury, but I don't recall whether some of the information [regarding Ms. Coleman's injury] came from another . . . source, since this occurred 6 years ago." Id. Based on the information in the report regarding the size of a particular blister, Ms. Gutenberg believed that she saw Ms. Coleman in her office. To the best of her recollection, Ms. Gutenberg typically would complete a VAERS report within 24 hours of receiving a report of a reaction. See P's Ex. 52 at 1029.

On March 3, 2004, Ms. Coleman began treatment with Dr. Mark Nelson, a dermatologist. Based on the medical history provided by Ms. Coleman, Dr. Nelson noted a "possible allergic reaction to [a] hepatitis B vaccination." Joint Stip. at 3, ¶10; P's Ex. 15 at 213-214. The results of an ordered biopsy confirmed that Ms. Coleman had linear IgA disease. Id. Dr. Nelson documented the medications that Ms. Coleman was taking and ordered additional blood tests. Id.

[6] This date is a typographical error. Ms. Coleman's medical records document the date of vaccination as October 20, 2003. P's Ex. 48 at 912.

Twelve days later, on March 15, 2004, Ms. Coleman saw Dr. Michael Hepner, an allergist. P's Ex. 14 at 202. The records from this office visit include Ms. Coleman's report that she developed a rash one week after receiving her first hepatitis B vaccination and her subsequent diagnosis with linear IgA bullous dermatosis. Ms. Coleman reported to Dr. Hepner an increase in the number of lesions she had and identified new areas on her body where the lesions appeared. Dr. Hepner reported to Dr. Nelson that Ms. Coleman had stopped taking Prednisone due to her weight gain and nasal bleeding. P's Ex. 15 at 215. Dr. Hepner adjusted Ms. Coleman's medications and performed a biopsy. Id.

Based on the history provided by Ms. Coleman, Dr. Hepner suspected that Ms. Coleman's condition may have been related to her vaccine, but admitted that a causal relationship could not be established conclusively. Dr. Hepner conducted a literature search but the results did not show an association between the hepatitis B vaccine and linear IgA disease. Nonetheless, he contacted the vaccine manufacturer and reported Ms. Coleman's reaction. Id. at 204-11.

One year later, on March 15, 2005, Ms. Coleman saw Dr. Dlugosz at the University of Michigan. Dr. Dlugosz recorded a hepatitis B vaccination, a history of rash since October 2003, and a diagnosis of linear IgA. Joint Stip. at 3, ¶11; P's Ex. 36 at 623.

Nearly one week after seeing Dr. Dlugosz, on March 21, 2005, Ms. Coleman saw Dr. Bradley, an infectious diseases specialist. Dr. Bradley recorded a history of a hepatitis B vaccination in 2003 with the development of a rash one to two weeks after vaccination. Joint. Stip. at 3,¶12; P's Ex. 36 at 620.

In January 2009, after moving from Michigan to Georgia, Ms. Coleman began seeing Dr. Mack Rachal, a dermatologist located in Atlanta, Georgia. P's Ex. 42 at 816. In November 2009, Dr. Rachal noted that Ms. Coleman developed a rash after her receipt of a hepatitis B vaccine and that she was eventually diagnosed with linear IgA. P's Ex. 42 at 803. Dr. Rachal observed that the development of IgA dermatosis following hepatitis B vaccine "has been reported in the literature." P's Ex. 42 at 767. Dr. Rachal did not indicate in his records whether he believed Ms. Coleman's receipt of a hepatitis B vaccine had caused her IgA dermatosis. Id. at 210.

B. The Fact Testimony

Ms. Coleman and her daughter Davina testified during a fact hearing held on March 24, 2010. Ms. Coleman testified first, and during her testimony, her daughter remained sequestered outside of the courtroom.

1. Juanita Coleman

Detailed here is Ms. Coleman's testimony concerning the events after her vaccination but before she sought medical treatment for the skin condition she developed after the vaccination.

Ms. Coleman testified that she was in good health prior to her receipt of the hepatitis B vaccination on October 20, 2003. Tr. at 110. She acknowledged some health issues involving her sinuses for which she took Prednisone. Id. at 111.

Around the time of her October 2003 hepatitis B vaccination, Ms. Coleman worked for five different agencies as a health care aide caring for homebound patients. Tr. at 16. Her duties included feeding, clothing, and transferring these patients. Ms. Coleman cared for 6-7 patients a day, six days a week. Tr. at 101.

In addition to working as an in-home health care aide, Ms. Coleman took a course to become an emergency medical technician ("EMT"). The clinical portion of the EMT course required Ms. Coleman to work in the emergency room of a hospital for three 12-hour shifts, as well as to assist with emergency care on an ambulance for another three 12-hour shifts. Tr. at 109, 134. Prior to participating in these clinical settings, Ms. Coleman had to get a series of hepatitis B vaccinations.

She received the first hepatitis B vaccination on October 20, 2003, at the Detroit Health Department. Tr. at 107, 109. About six to seven days after the October 20, 2003 vaccination, Ms. Coleman began to experience a limited rash on her arms with small bumps similar to pimples or hives. Tr. at 17, 19, 116. Her rash initially started on her arms and back and then began to spread to other areas of her body. Id.

Ms. Coleman did not seek medical treatment immediately but instead attempted to treat the rash and blisters herself using Benadryl, a hydrocortisone ointment, and the Prednisone she took for her sinus problems. Tr. at 18, 45. She attributed the worsening rash to an allergic reaction to the hepatitis B vaccination. Without health insurance at that time, Ms. Coleman was concerned about the cost of seeking medical treatment. Tr. at 19.

Ms. Coleman testified that she returned to the Health Department where the vaccination had been administered approximately one week after her hepatitis B vaccination for the purpose of obtaining further information about the vaccine. She got the vaccine "vial number," "site," and "lot number," and the nurse with whom she spoke at the Health Department "took a measurement" of the rash "to report it." Tr. 18, 140.

Ms. Coleman's rash and blisters continued to worsen over the next few weeks. Tr. at 136-37. As the rash spread, it blistered and became itchy. Attached to Ms. Coleman's vaccine petition (P's Ex. 2 at 1-6) are undated photographs of her rash and blisters. She believed the pictures were taken in November and December 2003. Tr. at 25. After

notifying her employer of her condition, Ms. Coleman continued with her patient assignments. Tr. at 129. She did take safety precautions in discharging her health care duties by wearing long-sleeved shirts and gloves. Tr. at 144. But Ms. Coleman acknowledged it was difficult to avoid irritating her blisters when she performed tasks requiring bodily contact. Tr. at 146-148, 150.

Ms. Coleman first sought medical treatment for her skin condition on December 26, 2003, at the emergency room at Detroit Receiving Hospital. Tr. at 21, 144. By this time, Ms. Coleman's rash and blisters were very itchy and painful and as the blisters would burst, they would seep through her clothing. Tr. at 146-148, 150.

At hearing, Ms. Coleman disputed the 2-3 week rash history recorded in her medical histories from the treaters she saw in December 2004, when she began to seek treatment for her skin condition. She insisted that her rash had been present for better than six weeks by the time she sought medical treatment.

At the time of the hearing, Ms. Coleman was not employed. She explained that she had not worked since 2005 because her medications caused drowsiness. In addition, she expressed concern about exposing herself to others' germs during her employment as a home health care aide.

Ms. Coleman explained that from time to time, she continues to get bumps and blisters from the rash on her arms and other parts of her body. But, the recurrence of the bumps and blisters is not as frequent. Tr. at 65-68, 223-24.

Having observed the demeanor of Juanita Coleman during her testimony, the undersigned is persuaded that she offered as honest a recollection as is now possible of the described events. The undersigned attributes the discrepancies between her testimony and the filed contemporaneous medical records to the passage of time. Consistent with the Federal Circuit's guidance in Curcuras v. Sec'y of Health & Human Servs., the undersigned ascribes greater weight to the contemporaneous written medical records than to Ms. Coleman's conflicting later recollections. 993 F.2d 1525, 1528 (Fed. Cir. 1993) (internal citations omitted) ("[O]ral testimony in conflict with contemporaneous documentary evidence deserves little weight.").

2. Davina Coleman

Davina Coleman, Ms. Coleman's daughter, also testified. Tr. at 240. Davina testified that in October 2003, she regularly visited her mother two to three times a week. Id. She first noticed that her mother had developed a skin condition in late October 2003. Id. Davina testified that her mother initially described her skin condition as one involving little bumps or hives, similar to having an allergic reaction. Tr. at 242. Davina personally observed the rash on her mother's arms when the rash began in October 2003.

She also described the rash to include "fine little red bumps . . . on her forearm." Tr. at 251. She recalled that, "a few days later," her mother's skin condition began to deteriorate. Tr. at 250. By mid-November 2003, the bumps had become blistered, and "fluidy." They covered Ms. Coleman's back, her stomach, and her arms. Tr. at 242, 251-53.

From December 2003 through January 2004, her mother's rash became worse, spreading to cover her breasts, midsection, and legs. Tr. at 255-257.

Davina explained that her mother did not seek medical attention promptly because Ms. Coleman did not have medical insurance. Tr. at 254.

Davina accompanied her mother on a number of visits to see Dr. Nelson in Birmingham and she accompanied her mother on every visit to see Dr. Rachal. Tr. at 243, 259. She recalls Dr. Rachal affirmatively stating that Ms. Coleman's condition was a reaction to the hepatitis B vaccine. But Dr. Nelson was not as confident about the vaccine association. Tr. at 265-66.

Like her mother, Davina offered as honest a recollection as possible of the described events. The passage of time, however, has affected the completeness and accuracy of her testimony. The undersigned ascribes greater weight to the contemporaneously written medical records than to Davina's later recalled conflicting testimony. Curcuras v. Sec'y of Health & Human Servs., F.2d 1525, 1528 (Fed. Cir. 1993) (internal citations omitted).

C. Uncontested Facts

Certain facts are uncontested in this case and corroborate the testimony of Ms. Coleman and her daughter.

On September 2, 2003, Ms. Coleman applied for enrollment in the emergency medical technician ("EMT") training program offered through Superior Medical Education, Inc. P's Ex. 44 at 898. Joint Stip. at 1, ¶1. Pursuant to the EMT training requirements, Ms. Coleman received a hepatitis B vaccination at the Oakland County Health Department on October 20, 2003. Joint Stip. at 1, ¶2; tr. at 16, 90, 107-109; P's Ex. 48 at 912.

At the time she received the hepatitis B vaccination, Ms. Coleman was employed as a home health aide by several agencies. Joint Stip. at 1, ¶3; tr. at 16, 100; see e.g., P's Exs. 30-32, 24. She continued to work as a home health aide on a regular basis following her receipt of the hepatitis B vaccination in 2003 and 2004. Id.; tr. at 101, 129, 151-152, 213.

Between November 15 and 29, 2003, Ms. Coleman worked three twelve-hour shifts at Henry Ford Hospital and three twelve-hour shifts on an ambulance service as part of her clinical training in the EMT training program. Joint Stip. at 2, ¶4; tr. at 123-34; P's Ex. 48 at 907.

Ms. Coleman did not receive any treatment from a physician, nurse, or other medical personnel between October 20, 2003, and December 26, 2003. Joint Stip. at 2, ¶5; tr. at 21. On December 26, 2003, Ms. Coleman received medical treatment at the Detroit Receiving Hospital emergency room. Joint stip. at 2, ¶6; P's Ex. 33 at 516-17. The record of this visit indicates that Ms. Coleman presented with a rash on her shoulder, neck, abdomen, and inner thighs that had been present for over 10 days. Id.

Ms. Coleman received medical treatment at University Dermatology in January 2004, using her sister's Medicaid identification, which she admitted was improper. Joint stip. at 2, ¶7; tr. at 175; P's Ex. 19 at 322-23. The medical record of Ms. Coleman's first visit to University Dermatology on January 2, 2004, indicated that she had a two to three week history of a "rapidly progressive, very itchy blistering rash" that started on her back and then spread to the rest of her body. Id.; P's Ex. 29 at 348.

On March 1, 2004, Nurse Rosemary Gutenberg of the Macomb County Health Department, Southwest Office, prepared a VAERS Report. Joint Stip. at 2, ¶ 9; P's Ex. 37. The VAERS report indicated that Ms. Coleman received a hepatitis B vaccination on October 20, 2004[7] in her left deltoid and developed hives seven days later. Id. The rash began as small bumps that increased in size and blistered; one blister was documented measuring 30 x 40 mm. The VAERS report documents a diagnosis of linear IgA Bulbous [sic] Disease and lists the medications with which Ms. Coleman has been treated since January 2004. Joint Stip. at 3, ¶9; P's Ex. 44.

On March 3, 2004, Ms. Coleman saw Dr. Mark Nelson for complaints of a "possible allergic reaction to [a] hepatitis B vaccination. Joint Stip. at 3, ¶10; P's Ex. 15 at 213. Ms. Coleman reported to Dr. Nelson that the rash started one week after her first hepatitis B vaccination. Dr. Nelson's records reflect a diagnosis of linear IgA. Id.

On March 15, 2005, nearly two weeks after, Ms. Coleman saw Dr. Dlugosz at the University of Michigan. He also recorded a history of rash since October, 2003, a recent hepatitis B vaccination, and a diagnosis of linear IgA. Joint Stip. at 3, ¶11; P's Ex. 36 at 623.

On March 21, 2005, Ms. Coleman saw Dr. Bradley, an infectious disease specialist. Dr. Bradley recorded a history of a hepatitis B vaccination in 2003 and a rash

[7] As noted earlier, this date is a typographical error. Ms. Coleman's medical records document the date of vaccination as October 20, 2003, not 2004. P's Ex. 48 at 912.

that developed one to two weeks after the vaccination. Joint. Stip. at 3,¶12; P's Ex. 36 at 620.

On November 7, 2009, Ms. Coleman visited Dr. Rachal, a dermatologist. Ms. Coleman relayed a history of linear IgA disease that followed a vaccination with hepatitis B vaccine. Dr. Rachal noted in his records that "[t]his has been reported in several cases in the literature." Joint Stip. at 3, ¶13; P's Ex. 42 at 765.

D. The Contested Facts

The parties disagree about the timing of the onset of the rash Ms. Coleman experienced following her receipt of the hepatitis B vaccine on October 20, 2003. The parties also disagree about the severity of Ms. Coleman's rash during the period spanning from October 20, 2003, through Ms. Coleman's initial hospital visit on December 26, 2003. The parties' disagreement stems from the lack of corroboration of the testimonial account provided by Ms. Coleman and her daughter by the earliest records of treatment.

Respondent asserts that the most contemporaneous records do not support the onset of Ms. Coleman's rash within one week of her hepatitis B vaccination. Rather, the records show that Ms. Coleman first sought emergent medical treatment for a diffuse rash on December 26, 2003. Ms. Coleman received her hepatitis B vaccination sixty-seven (67) days prior to her visit to the emergency room.

Respondent also points to the record of Ms. Coleman's first visit to University Dermatology on January 2, 2004, which documents the onset of her rash as two to three weeks prior to that visit. R's Mem. at 8; P's Ex. 29 at 348. The record ascribes Ms. Coleman's condition as a "rapidly progressive, very itchy, blistering rash." Id. Based on this history, the rash would have begun between December 12 and December 19, 2003, a time period that Respondent contends is consistent with the record from Detroit Receiving Hospital from December 26, 2003.

Moreover, the testimony about the timeframe during which Ms. Coleman's rash began and when the blisters started and spread is inconsistent. See R's Proposed Findings of Fact at 2, fn. 1. Ms. Coleman stated that the rash spread to her legs at about the time she sought treatment in the emergency room at Detroit Receiving Hospital in December 2003. Tr. at 38-39. Ms. Coleman also testified that the rash spread all over her body in late November and December 2003. Tr. at 27, 145. In addition, Ms. Coleman testified that her rash did not spread to her stomach, lower back, and thighs until January and February 2004. Tr. at 38-40.

Ms. Coleman's daughter's testimony also conflicted with the various accounts given by Ms. Coleman. Davina Coleman testified that her mother's rash appeared

"toward the end of October," beginning as small, red bumps, and spreading to her back a few days later. Tr. at 249-50.

Respondent questions the credibility of Ms. Coleman's testimony that between November 2003 and January 2004, that her rash had become unbearably painful, causing her body to feel sore and to throb. Id. at 145-46, 148. Ms. Coleman testified that during the same time frame, blood would ooze through her clothes and her blisters would burst and leak through her clothing when people hugged her. Id. at 146. In Respondent's view, it is unlikely that Ms. Coleman's employers would have allowed her to continue working with patients as an in-home health care aide with open blisters and sores as severe as Ms. Coleman described. Respondent further questions whether Ms. Coleman would have been allowed to participate in her EMT shifts where she worked in an emergency room and on an ambulance while she was experiencing a rash as severe as she described.

The undersigned must resolve the pending factual dispute regarding Ms. Coleman's rash after her receipt of the hepatitis B vaccine on October 20, 2003, before addressing the issue of whether Ms. Coleman is entitled to Program compensation in this case (a matter not yet ripe for decision, but to be addressed in due course). This ruling is limited to resolving the parties' factual disputes.

A. Legal Standard and Analysis

In Vaccine Act cases, a petitioner must prove, by a preponderance of the evidence, the factual circumstances surrounding her claim. § 300aa-13(a)(1)(A). This evidentiary standard requires that the Special Master "believe that the existence of a fact is more probable than its nonexistence before [she] may find in favor of the party who has the burden to persuade the [special master] of the fact's existence. In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring (quoting F. James, Civil Procedure 250-51 (1965)).

To resolve the presented fact issues, the undersigned must determine what weight to assign the documentary record, which includes the contemporaneous medical records created and what weight to assign the later-given oral testimony that includes certain factual details that are absent from the existing documentary record. The case law instructs that oral testimony that conflicts with contemporaneous documentary evidence generally receives less evidentiary weight. See United States v. United States Gypsum Co., 333 U.S. 364, 396 (1948) ("Where [witness] testimony is in conflict with contemporaneous documents we can give it little weight[.]"); Montgomery Coca-Cola Bottling Co. v. United States, 615 F.2d 1318, 1327 (Ct. Cl. 1980) ("The subjective intent testimony of the plaintiff can only be seriously considered to the extent it is consistent with the objective evidence."; Curcuras v. Sec'y of Health & Human Servs., 993 F.2d

1525, 1528 (Fed. Cir. 1993) (Conflicting oral testimony is afforded less evidentiary weight than written medical records).

The usefulness of record evidence in the court's analysis of a case, however, turns on what is contained in the records. As the United States Claims Court observed:

> [T]he absence of a reference to a condition or circumstance is much less significant than a reference which negates the existence of the condition or circumstance. Since medical records typically record only a fraction of all that occurs, the fact that reference to an event is omitted from the medical records may not be very significant.

Murphy v. Sec'y of Health & Human Servs., 23 Cl. Ct. 726, 733 (1991), aff'd, 968 F.2d 1226 (Fed. Cir. 1992), cert. denied sub nom. Murphy v. Sullivan, 113 S. Ct. 463 (1992) (citations omitted). The Federal Circuit has determined that a decision concerning whether to accord greater evidentiary weight to contemporaneous medical records or to later-given oral testimony is discretionary and "uniquely within the purview of the special master." Burns v. Sec'y of Health & Human Servs., 3 F.3d 415, 417 (Fed. Cir. 1993).

Here, while the undersigned found Ms. Coleman and her daughter to be earnest in their testimony, it is difficult to reconcile their later-recalled accounts of certain dramatic events following Ms. Coleman's vaccination with the dearth of corroboration in the most contemporaneous medical records. A review of the filed medical records suggests that Ms. Coleman and her daughter recalled events of importance that strongly occurred later in time than their testimony indicated. In light of record evidence that conflicts with the testimony of Ms. Coleman and her daughter, the undersigned cannot credit the portions of the hearing testimony or the affidavits that are inconsistent with the contemporaneous medical records. Thus, the undersigned does not credit Ms. Coleman's testimony that the onset of her rash began one week after her October 20, 2003 vaccination. Corroboration of Ms. Coleman's testimony is wanting. While several of Ms. Coleman's medical records contain reports that her rash began one week after her vaccination, the reported time of onset was provided by Ms. Coleman a number of months after she received the vaccination and directly conflicts with the medical history Ms. Coleman provided closer in time her vaccination.

The undersigned also does not credit Ms. Coleman's testimony concerning when she reported her vaccine reaction to the Health Department. Contrary to Ms. Coleman's testimony that she spoke with a nurse at the Health Department one week after her vaccination, the affidavit of Nurse Gutenberg indicates that she more likely than not saw Ms. Coleman in the Health Department Office (as evidenced by the measurement of one of Ms. Coleman's blisters) on Friday, February 27, 2004, and then reported the vaccine reaction to VAERS on Monday, March 1, 2004. See P's Ex. 44.

Moreover, the undersigned declines to credit Ms. Coleman's testimony concerning when her rash began to spread and began to blister because Ms. Coleman's own testimony on this issue is inconsistent. Ms. Coleman testified that her rash spread to other parts of her body between November 2003 through December 2003, but she also testified that the rash first began to spread in December 2003. Ms. Coleman further recalled that the rash did not spread to her stomach, lower back, and thighs until January or February of 2004. Ms. Coleman's daughter, Davina, testified that Ms. Coleman's rash began to spread from her arms to her back as early as October 2003. Tr. at 249-250. Because Ms. Coleman's testimony conflicts with that of her daughter and even herself, the undersigned cannot credit this aspect of Ms. Coleman's testimony.

In addition, the undersigned gives little credit to Ms. Coleman's testimony that her rash became blistery and leaked through her clothing in November and December of 2003 during her EMT training. That Ms. Coleman's EMT training supervisor and fellow students were aware of her skin condition and expressed no concern regarding her continued contact with sick and recovering patients is difficult to accept as factual.

The earliest medical records documenting Ms. Coleman's treatment for the rash that first appeared after her hepatitis B vaccination are dated December 26, 2003. At that time, Ms. Coleman sought treatment for a diffuse rash over her trunk that had been present "for more than 10 days." The rash reportedly started with a small lesion on her left forearm, which she scratched. As she continued to scratch, a rash developed. The lesions became raised crusted sores with pustular weeping or golden exudates. P's Ex. 33 at 516-17. Contrary to Ms. Coleman's testimony that she told the physician at the emergency room that she had received a hepatitis B vaccine approximately nine weeks earlier, the emergency room record does not contain that information. Nor does the hospital record indicate that the rash first appeared eight weeks earlier. Ms. Coleman has not been able to provide any further evidence to substantiate this aspect of her claim. Contrary to Ms. Coleman's assertions, the only VAERS Report available in the record is the report completed on March 1, 2004, by Nurse Gutenberg and that VAERS report contains details that are most consistent with Ms. Coleman's earliest records of treatment for her rash. P's Ex. 27; tr. at 193-94.

II. Findings of Fact

For the foregoing reasons, the undersigned determines that a preponderance of the evidence supports the following factual findings:

1. Ms. Coleman received a hepatitis B vaccination on October 20, 2003, at the Oakland County Health Department pursuant to the requirements for participation in the EMT training course.

2. Ms. Coleman occasionally took Prednisone, Benadryl and Claritin for sinus and nasal problems, but was not taking other medications at the time she received the hepatitis B vaccination.

3. As part of her EMT training, Ms. Coleman worked three 12-hour shifts in the emergency room at Henry Ford Hospital and three 12-hour shifts on an ambulance service. This training occurred between November 15 and 29, 2003.

4. Ms. Coleman developed a rash between December 12 and December 19, 2003.

5. In December 2003, around Christmas, Ms. Coleman verbally reported to her employers and her EMT training supervisor that she had a rash. At that time, Ms. Coleman's rash and blisters were not severe enough that Ms. Coleman was directed to discontinue assisting patients. Ms. Coleman did not complete any forms or other documentation for her employer related to her rash.

6. Ms. Coleman sought treatment at the Detroit Receiving Hospital on December 26, 2003 for a rash she reported to have been "present for more than 10 days." On presentation, Ms. Coleman had a diffuse rash over her shoulder, neck, abdomen and inner thighs.

7. On January 2, 2004, Ms. Coleman saw a dermatologist at University Hospital for further treatment under her sister's name, Sheila Dunn. Ms. Coleman reported that she had a two to three week history of a "rapidly progressive, very itchy blistering rash" that started on her back and then spread to the rest of her body. Ms. Coleman denied having any prior treatment for this rash.

8. On January 7, 2004, Ms. Coleman continued receiving treatment using her sister's Medicaid card. Ms. Coleman's condition was much improved and she had very few new lesions. She was assessed with linear IgA disease that was improving with treatment.

9. Ms. Coleman first made a report of a possible vaccine reaction to the Health Department on or about March 1, 2004. The VAERS report was prepared by Ms. Rosemary Gutenberg, a registered nurse, who sent the report to VAERS within 24 hours of preparing Ms. Coleman's report.

III. Conclusion

The medical significance of the foregoing factual findings remains to be addressed by the parties' respective experts. On or before June 1, 2011, the parties shall contact chambers to schedule a status conference to address further proceedings in this case.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master