OFFICE OF SPECIAL MASTERS

No. 97-436V

(Filed: February 17, 2000)

CARLENE T. LUNN, as mother and natural guardian of MEGAN-ROSE LUNN,	*	
Petitioner,	*	**TO BE PUBLISHED**
v.	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	

Robert F. Danzi and Mona Engel, Westbury, New York, for petitioner.

Lynn Harris, Department of Justice, Washington, D.C., for respondent.

DECISION

HASTINGS, ***Special Master***.

This is an action seeking an award under the National Vaccine Injury Compensation Program (hereinafter "the Program"[1]), on account of an injury suffered by Megan-Rose Lunn.[2] For the reasons stated below, I conclude that petitioner is not entitled to such an award.

[1]The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq.* (1994 ed.). Hereinafter, all "§" references will be to 42 U.S.C. (1994 ed.).

[2]At the hearing held on September 21, 1999, the petitioner explained that the legal last name of both herself and her daughter Megan-Rose is now Lunn instead of Giuffrida. Accordingly, the caption of this case is hereby changed to reflect that name change.

I

STATUTORY BACKGROUND

Under the Program, compensation awards are made to individuals who have suffered injuries after receiving certain vaccines listed in the statute. There are two separate means of establishing entitlement to compensation. First, if an injury specified in the "Vaccine Injury Table," originally established by statute at § 300aa-14(a) and since modified administratively (see fn. 2 below), occurred within the time period from vaccination prescribed in that Table, then that injury may be *presumed* to qualify for compensation. § 300aa-13(a)(1)(A); § 300aa-11(c)(1)(C)(I); § 300aa-14(a). If a person qualifies under this presumption, he or she is said to have suffered a "Table Injury." Alternatively, compensation may also be awarded for injuries not listed in the Table, but entitlement in such cases is dependent upon proof that the vaccine *actually caused* the injury. § 300aa-13(a)(1); § 300aa-11(c)(1)(C)(ii).

In this case, petitioner's claim is that the profound hearing deficiency of her daughter Megan-Rose was caused by a DPT (diphtheria, pertussis, tetanus) vaccination that Megan-Rose received on June 24, 1994. The DPT vaccination is listed in the Vaccine Injury Table, but petitioner does not allege that Megan-Rose suffered any of the injuries listed in the Table for that vaccination, so this case does not involve an allegation of a "Table Injury."[3] Instead, the issue here is whether petitioner has successfully demonstrated that Megan-Rose's hearing deficiency was "more probably than not"[4] *caused by* that vaccination.

II

FACTS

A. Facts appearing in medical records

Megan-Rose Lunn was born on November 10, 1993, to the petitioner, Carlene T. Lunn. (The last name of both was Giuffrida at that time, but has since been changed to Lunn.) Megan-Rose received DPT vaccinations on January 3, March 18, and June 24, 1994. The medical records concerning those vaccinations do not note any immediate reactions by the infant to any of those vaccinations.

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[3]I note that the Vaccine Injury Table set forth in the statute was administratively modified by the Secretary of Health and Human Services in 1995 and again in 1997. Those changes are irrelevant to this case, however, since none of the versions of the Table have ever listed hearing loss as a Table Injury.

[4]Petitioner has the burden of demonstrating the facts necessary for entitlement to an award by a "preponderance of the evidence." § 300aa-13(a)(1)(A). Under that standard, the existence of a fact must be shown to be "more probable than not." *In re Winship*, 397 U.S. 358, 371 (1970) (Harlan, J., concurring).

On July 8, 1994, Megan-Rose was seen for an audiology evaluation. (Ex. 1F, p. 1.[5]) The evaluation revealed that Megan-Rose's hearing was profoundly impaired in both ears. (*Id.*) When a history was taken on July 11, 1994, in conjunction with the audiology evaluation, it was reported that the hearing defect had been "detected" by Megan-Rose's parents on July 4th, when the infant displayed no reaction to fireworks noise. (*Id.*) It was also reported that Megan-Rose had experienced, at some unspecified time, a fever of 104 degrees for two days, accompanied by cough and diarrhea. (*Id.*)

Another history was taken in conjunction with a further hearing evaluation, on July 22, 1994. (Ex. 1K at 19.) Megan-Rose's mother reported at that time the "feeling that Megan-Rose heard well until late last month." (*Id.*) The note adds that Megan-Rose had a high fever ("104-104.5") for two days after her DPT inoculation on June 24, and that "after that time" Megan failed to respond to loud noises such as the July 4th fireworks. (*Id.*)

Since July of 1994, it has become clear that Megan-Rose suffers from an irreversible and profound hearing deficiency. Medical intervention, in the form of cochlear implants, has helped her to gain at least some hearing capacity, but Megan-Rose's overall development has been severely affected by her hearing deficiency.

B. Additional factual allegations of petitioner

The petitioner has supplemented the details available from the medical records with her own testimony, first in an affidavit (Ex. 2) and later in oral testimony. Petitioner testified that prior to the DPT inoculation on June 24, 1994, Megan-Rose's development seemed normal. In particular, petitioner reported, the infant seemed to respond normally to voices and other noises, and made typical infant "cooing" noises. Petitioner added that Megan-Rose even seemed to be a "light sleeper," rather easily woken up by noise.

Petitioner also explained that on June 24, 1994, after receiving the DPT vaccination, Megan-Rose developed a mild fever. On the following morning, the fever went higher, eventually reaching 104 to 105 degrees. Petitioner telephoned her pediatrician's office, and was instructed to give Megan-Rose some Tylenol. After the administration of that medication, Megan-Rose's temperature in fact went down, and therefore the baby was not taken for medical attention.

Petitioner further testified that after Megan-Rose's fever episode on June 24 and 25, the infant's behavior seemed substantially different. Petitioner reported that Megan-Rose's cry seemed different than her previous crying, as if the infant were frightened, and that the baby seemed more "clingy." (*See, e.g.*, 1-Tr. 28-29.[6])

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[5]Petitioner filed Exs. 1 through 3 on June 19, 1997, and Exs. 4 through 9 on October 13, 1998. "Ex." references will be to those exhibits.

[6]Two evidentiary hearings were held in this case. On September 21, 1999, the petitioner testified; "1-Tr." references are to the transcript of that hearing. On October 4, 1999, the two expert witnesses, Dr. Etra and Dr. Tunkel, testified; "2-Tr." references are to the transcript of that hearing.

Petitioner testified that at Megan-Rose's christening on July 3, 1994, it seemed difficult to get the baby's attention. Then, on the following day, July 4, petitioner's concern turned to alarm when the infant failed to react to the fireworks noise. Megan-Rose's parents then deliberately made more loud noises near the baby, but failed to get a reaction, and thus determined to get the infant a hearing evaluation. That evaluation, as noted above, resulted in the confirmation that Megan-Rose suffers from severe hearing impairment.

III

DISCUSSION

A. Summary of parties' positions

Petitioner relies foremost on the opinion of Dr. Richard Etra, a physician specializing in otolaryngology (care of the ear, nose, and throat[7]). Dr. Etra filed a written report on April 22, 1999, and testified orally at the evidentiary hearing held on October 4, 1999. Dr. Etra opined that the DPT vaccination on June 24, 1994, caused the fever that Megan-Rose experienced that day and the following day, and that the fever, in turn, caused her hearing loss. Dr. Etra explained that while it has never been definitively proven, he and many physicians believe it likely that high fevers can cause hearing loss. He relies heavily upon the fact that Megan's hearing loss was first detected shortly after her fever episode, along with the testimony of Megan-Rose's mother that the infant seemed to respond well to voices prior to the DPT inoculation.

Respondent, on the other hand, relied upon the testimony of Dr. David Tunkel, who is also a physician specializing in otolaryngology. Dr. Tunkel also filed a written report (Respondent's Ex. A, filed on June 30, 1999), and testified at the October 4 hearing. Dr. Tunkel's opinion is that even in light of the fact that Megan-Rose's hearing deficiency was discovered soon after her DPT vaccination, it is simply speculative to conclude that the vaccination was the cause of her hearing problem. Dr. Tunkel testified that there exists no evidence to support the propositions that either the DPT vaccination, or high fevers in general, can cause hearing loss. He noted that most of the severe hearing impairments found in infants are thought to be congenital in nature; they exist from birth but simply are not *recognized* until the infant is several months old or even older. Dr. Tunkel believes that a congenital problem is the most likely explanation for Megan-Rose's hearing loss.

B. Resolution

After careful analysis of all of the evidence of record, I have concluded that petitioner has failed to carry her burden of demonstrating that it is "more probable than not" that Megan-Rose's hearing loss was vaccine-caused. While the issue certainly is not free from doubt, ultimately I found Dr. Tunkel's arguments to be more persuasive. A detailed explanation of my conclusion follows.

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[7]I note that Dr. Etra's written report refers to the speciality of "otorhinolaryngology." That term seems to be interchangeable with the term "otolaryngology." See, *e.g.*, *Dorland's Illustrated Medical Dictionary*, 27th ed. 1988, p. 1203.

1. Petitioner's testimony

I begin by stressing that my conclusion does *not* mean that I doubted the truthfulness of the testimony of petitioner. To the contrary, I found petitioner to be an honest witness, as well as a dedicated mother. Nevertheless, even *accepting* the basic truthfulness of petitioner's testimony, the record still do not support a conclusion that the DPT vaccination caused Megan-Rose's hearing loss.

2. Lack of proof linking either DPT vaccination or fever to hearing loss

The chief problem for petitioner is a lack of proof substantiating Dr. Etra's basic proposition that high fevers can cause profound hearing loss. Dr. Etra was vague in explaining why he believes this to be the case. He seemed to indicate that he bases this conclusion in part on his clinical experience as a physician specializing in ear problems, but failed to state any examples of cases supporting this theory. He also seemed to suggest that some other physicians share the assumption that fevers can cause hearing loss, but failed to explain why he believes that to be the case. Dr. Etra acknowledged that he does not know *how* a fever might cause hearing loss. (2-Tr. 61.) He also acknowledged that he is aware of no medical literature that supports the theory that fevers can cause hearing loss in humans. (2-Tr. 11, 57-58.) At the hearing, I invited Dr. Etra to supply after the hearing any literature that he could find supporting this theory (see 2-Tr. 59-60), but since that hearing petitioner has not filed any such literature.

To the contrary, Dr. Tunkel explained that he has searched the medical literature, and could find *no support* for either the theory that the DPT vaccination can cause hearing loss or the theory that high fevers can cause hearing loss. (See Ex. A at 2.) Moreover, Dr. Tunkel pointed to Respondent's Ex. C, a letter published in the medical journal *Pediatrics* describing another extensive medical literature search which failed to find any support for the theories that DPT vaccinations or fevers can cause hearing loss. Ex. C lists numerous medical texts in the fields of pediatrics, hearing disorders, otolaryngology, and related fields, which are said to contain no mention of DPT vaccinations or fevers as potential causes of hearing loss.

To be sure, Dr. Tunkel acknowledged that some physicians may accept the general proposition that high fevers can cause hearing loss, and that many lay people probably also have that idea. (2-Tr. 30, 62-63.) But he stated that this theory is *not* generally accepted among otolaryngologists with whom he had spoken. (2-Tr. 43.) Dr. Tunkel stressed, moreover, that there simply appears to be no actual *medical evidence* supporting such a belief, regardless of who may subscribe to it. He suggested that this belief may be a result of the fact that certain infectious diseases, such as meningitis, are in fact known to cause hearing loss, and also to cause high fevers. Dr. Tunkel asserted that in such cases, it is the *infectious agent itself* that causes the hearing loss, not the fever. (2-Tr. 30, 48.)

It is true that in addition to Dr. Etra's testimony, petitioner has pointed to a few items that might be viewed as evidence that fevers or DPT vaccinations can cause hearing loss. First, Dr. Etra in his written report (see para. 8) cited two sources for his proposition. The first was an article posted on the Internet "website" of a group known as the "Hearing Alliance of America," entitled

"Hearing Loss: Causes."[8] The article contains a notation that "extended high fevers can cause hearing loss," without adding any explanation for the statement. At the hearing, however, Dr. Etra acknowledged that he is not familiar with the Hearing Alliance, and cannot vouch for the reliability of any information promulgated by the organization. (2-Tr. 57.) In addition, my own inquiry indicates (see material filed by me on October 14, 1999), that the Hearing Alliance is a two-year-old organization founded by three non-physicians. Thus, the statement in question may simply be an example of Dr. Tunkel's suggestion, previously cited, that some persons have simply made an *assumption* in this regard without ever inquiring as to whether any scientific *support* exists for the proposition. Under these circumstances, I cannot view this website statement, concerning an issue of medical causation, as significant support for the proposition at issue.

Second, Dr. Etra cited a medical journal article entitled "Effect of Temperature on the Transient Evoked and Distortion Product Otoacoustic Emissions in Rats." This indeed seems to be a reputable article in a reputable medical journal, but my review of it (Dr. Etra did not even mention it in his hearing testimony) indicates that it provides no significant support for the proposition that a fever in the range of 104-105º Fahrenheit could cause permanent hearing loss in a human. The article discussed an experiment concerning the effect on hearing when rats had their body temperatures raised or lowered. It noted that when the rats had their temperatures raised by several degrees (on the Celsius scale) above normal, their hearing typically was affected, but that the effect was *reversed* when the temperatures returned to normal. (See p. 353--"returning the heated animal to 37º C. was accompanied by recovery of the responses.") To be sure, when the rats had their temperatures increased to an *extremely* high level--high enough to cause heat stroke and to kill one of the animals, one of the eight rats did have irreversible loss of hearing function. (See p. 359.) However, this evidence, that *extremely* high body temperatures can cause hearing loss in *rats*, hardly constitutes significant evidence for the proposition that a temperature of *104º-105º* Fahrenheit can cause *human* hearing loss. Many experts testifying before me in Program cases have cautioned against drawing conclusions about humans from animal studies. Moreover, there is no evidence in the record here that the temperatures to which the rats were submitted are in any way comparable to a fever of 104º-105º in a human.

Finally, petitioner has suggested (see Ex. 5, p. 2, para. 5) that there have been several case reports of persons experiencing deafness after DPT vaccinations, some of those after fever. These reports have allegedly been made to the Vaccine Adverse Event Reporting System ("VAERS"), which is a government-operated system that collects reports of adverse incidents experienced by persons after vaccinations. Petitioner, however, has failed to offer *any information* about these alleged reports, much less copies of the reports themselves. Dr. Etra did not even mention such reports in explaining his opinion. Moreover, in many Program cases expert witnesses have explained to me that lessons about causation of injuries *cannot* be reliably drawn from a few individual case reports. That is, in the case of commonly-given vaccinations, such as DPT, a number of injuries will be experienced soon after vaccination by *pure chance*, even though there is no causal relationship between the two events. In this case, Dr. Tunkel suggested the same point concerning these alleged VAERS case reports. (2-Tr. 70.) In this case, in the absence of more information

[8]Petitioner did not file either of the cited documents, but I obtained both myself, and placed copies thereof into the record of this case on October 7, 1999. I also placed additional material from the same Hearing Alliance source into the record of this case on October 14, 1999.

about the case reports, or testimony from a credible medical expert as to how they might be helpful in resolving the causation issue here, I cannot accord any significant weight to these reports.

In short, the chief failure of petitioner's case is the lack of any substantial proof that either DPT vaccinations, or fevers in general, *can* cause hearing loss. There is simply not sufficient evidence in this regard to support a ruling in petitioner's favor concerning the causation issue in this case.

3. Doubt about whether the DPT vaccination was the cause of Megan-Rose's fever

There is also a second significant problem with petitioner's case--the fact that Megan-Rose also had a cough and diarrhea at the time of her fever episode. The fact that she did have such symptoms is clear from the record. For example, the first written history, taken on July 11, 1994, states unambiguously that the infant's fever was "accompanied by cough, diarrhea." (Ex. 1F at 1.) Indeed, petitioner confirmed the existence of these two additional symptoms in her affidavit (Ex. 2, para. 5), although by the time of the hearing she had no memory of the symptoms.

These symptoms are significant because they call into question whether Megan-Rose's *fever* was caused by her *DPT vaccination*. While it is true that DPT vaccinations sometimes cause fevers, it is also true that an infectious process can cause a fever. And while an *infection* could cause a cough and/or diarrhea, it does not seem likely that a *DPT vaccination* would cause such symptoms. Therefore, the fact that Megan-Rose had a cough and diarrhea at the time of her fever constitutes significant evidence that her fever might have been caused by an *infection* rather than her DPT vaccination.

It is significant, in this regard, that Dr. Etra noted in his written opinion that Megan-Rose's mother "did not report any other symptoms [besides fever] consistent with viral infection," and that "*[i]n the absence* of other significant viral symptomatology such as productive cough * * * [or] gastrointestinal symptoms" his opinion was that the DPT vaccination caused the fever. (See para. 5, emphasis added.) When I asked Dr. Etra about the cough and diarrhea, at the evidentiary hearing, he seemed to be unaware that such symptoms had been reported. (2-Tr. 56.) To be sure, Dr. Etra then seemed to indicate that his opinion would remain the same even under the assumption that such symptoms in fact did occur. (*Id.*) But I did not find this explanation to be persuasive. There remains, in my view, a substantial question whether Megan-Rose's *fever* was caused by some type of infection rather than her DPT vaccination. And this doubt, of course, adds additional reason to doubt that the vaccination was the cause of Megan-Rose's *hearing impairment*.

4. The temporal relationship

In reaching my conclusion, I certainly have not ignored the feature of this case which seems, at least on its face, to be favorable to a "causation" conclusion in petitioner's favor--*i.e.*, the temporal relationship between Megan-Rose's DPT vaccination, her fever episode, and the discovery of her profound hearing impairment. She received the vaccination on June 24, 1994, and became feverish that very day, with the fever peaking about noon the next day before subsiding by midafternoon. And her hearing deficiency was noticed *very* soon thereafter, as evidenced by not only petitioner's testimony, but also the contemporaneous medical records. Those records confirm not only Megan-Rose's failure to react to the July 4 fireworks, but also contain a notation made on July 22, 1994, indicating that the first evidence of deficient hearing occurred "late last month." (Ex. 1K at 19.)

"Late" June, of course, would put the first recognition of hearing deficiency as having occurred within several days or less after the fever subsided on June 25.

This striking temporal relationship, of course, would certainly make anyone *suspect* that the DPT vaccination and/or the fever episode caused Megan-Rose's hearing deficiency. Certain other factors, however, call into question the validity of inferring a *causal* relationship from the *temporal* relationship.

First, Dr. Etra noted that his conclusion was based on a history of a "sudden" and "dramatic" change in Megan-Rose's hearing immediately after the fever episode. (See, *e.g.*, 2-Tr. 5, 7, 8.) He further explained that if a fever episode were to cause a hearing loss, he would expect the damage to be apparent within *24 hours* after the fever. (2-Tr. 22-23.) However, from both the medical records and petitioner's testimony, we know that an *abrupt* change in *hearing status* was *not* immediately apparent to Megan-Rose's parents within 24 hours after the fever episode. Instead, the first specific incident of hearing deficiency mentioned in the medical records was the July 4th episode, while the first specific episode noted in the petitioner's hearing testimony was the difficulty in getting the infant's attention at the July 3 christening.[9] Further, the contemporaneous records suggest that the hearing problem was first noticed simply "late" in the month of June ("late last month"--Ex. 1K, p. 19), indicating that at that time Megan-Rose's parents could *not* pinpoint the onset of hearing problems to a particular day.

Thus, given Dr. Etra's testimony that a fever-caused hearing loss would likely result within 24 hours of the fever, the fact that Megan-Rose's parents did not report an abrupt onset on a particular day somewhat undercuts Dr. Etra's causation theory.

Second, Dr. Tunkel testified persuasively that the discovery of hearing deficiency in an infant or even a toddler does *not* mean that a *recent incident* caused the hearing problem. Rather, Dr. Tunkel explained that most hearing impairments identified in young children are thought to be *congenital* in origin, rather than caused by some incident after birth. (2-Tr. 28-29.) According, to Dr. Tunkel, about one in one thousand infants are born with significant hearing deficiency (2-Tr. 29, 34-35), but in most of those cases the impairment is not identified until months or even years after birth (2-Tr. 31-32, 50-51). Dr. Etra did not take substantial issue with any of this general testimony of Dr. Tunkel, and in fact confirmed that hearing deficiency in infants is often not diagnosed until the age range of 6-10 months (2-Tr. 17), precisely the range within which Megan-Rose fell when her impairment was diagnosed.

Thus, understanding this context reduces the appeal of the theory that because the discovery of the hearing deficiency quickly followed the fever episode, it was caused by that episode. Rather,

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[9]To be sure, at the hearing, petitioners testified that an abrupt change in other behavior by Megan-Rose's--*i.e.*, her crying changed and she became "clingy"--occurred immediately after the fever episode. But these symptoms are *not* described in the contemporaneous medical records. To the contrary, the contemporaneous records indicate that after the fever receded, Megan-Rose "seemed fine." (Ex. 1K at 19.) Moreover, it is certainly not clear that these additional symptoms have any relationship to Megan-Rose's hearing deficiency. In the final analysis, I cannot find that this particular testimony, concerning the alleged abrupt onset of a changed cry and "clingy" behavior, adds any significant weight to the theory that Megan-Rose's hearing deficiency was vaccine-caused.

it would be expected that, with so many children suffering from congenital hearing deficiency and with those deficiencies commonly being discovered at various times during infancy, by pure chance in some children such deficiencies will be recognized soon after a fever, an immunization, or another health-related incident, yet will in fact have no causal relationship to the incident.

Third, and most importantly, the temporal relationship in this case must be evaluated in light of the *medical evidence* as to whether a DPT vaccination or a fever episode is known to cause hearing loss. And, as discussed above at part III(B)(2) of this Decision, there is a lack of substantial evidence supporting petitioner's theory on this point. In other words, with respect to some injuries or diseases, we have enough evidence to conclude that Factor A *can* cause Injury B. Therefore, in a situation where Injury B followed temporally closely after the occurrence of Factor A in a particular individual, there may be good reason to presume that Factor A caused Injury B in that individual. However, where, as here, there is lack of any substantial evidence that the type of incident in question (here, fever or DPT vaccination) *can* cause the type of injury in question (here, hearing loss), then no matter how striking the temporal relationship, there is no strong reason for concluding that the temporal relationship was anything other than coincidental.

5. Other expert reports

I note that in addition to the opinion of Dr. Etra, petitioner also supplied written opinions from two other experts, Drs. Irwin Reichman and Jesse Bidansett. Neither was presented for oral testimony, however, and in my final analysis I cannot give significant weight to either opinion.

The report of Dr. Reichman, a pediatrician, appears at Ex. 3. In the brief report, Dr. Reichman states simply that the DPT vaccination caused Megan-Rose's hearing loss. The only explanation offered is the notation that Megan-Rose had apparently normal hearing prior to the vaccination and ran a fever immediately thereafter, followed by the assertion that "hearing loss is a documented phenomenon which can follow a DPT vaccination." (Ex. 3 at para. 4.) However, as I have explained above, the record in this case offers no support for that assertion, and indicates that, to the contrary, no such "documentation" exists.[10] Accordingly, I cannot afford significant weight to Dr. Reichman's opinion.

Dr. Bidansett, on the other hand, is not a medical doctor, but a Ph.D. toxicologist. His written report (Ex. 5) asserts that Megan-Rose's hearing loss was likely vaccination-caused. Dr. Bidansett states that the vaccination likely caused Megan-Rose's hearing loss by "an immunological process, either autoimmune or immune-mediated." But this conclusion is not well explained at all. Dr. Bidansett states that certain VAERS reports (see p. 6 above) support his conclusion, but does not explain anything about such reports, much less supply copies of them. He also cites to certain medical literature indicating *generally* that immunological events have been associated with hearing loss. But the report fails to provide any support for the proposition that *DPT vaccinations* can cause immunological events comparable to the ones in the cited medical literature. Moreover, Dr. Tunkel pointed out that he could find no cases in the medical literature of healthy *infants* suffering hearing loss from auto-immune or immunological factors. (See Resp. Ex. C, p. 2.) For these reasons, I also could not credit Dr. Bidansett's opinion over that of Dr. Tunkel.

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[10]See also Dr. Tunkel's discussion of Dr. Reichman's affidavit in Dr. Tunkel's written report. (Resp. Ex. C, p. 2.)

6. Related Program decisions

I note that I have located two Program published opinions involving claims that hearing loss was caused by a DPT vaccination. In *Bobbitt v. Secretary of HHS*, No. 90-1156V, 1992 WL 159524 (Cl. Ct. Spec. Mstr. June 10, 1992), the petitioners contended that their son's hearing impairment was caused by a DPT vaccination received when he was three months old. In that case, similar to the situation here, the vaccinee ran a fever for two days in the range of 105º Fahrenheit. *Zimmer v. Secretary of HHS*, No. 97-861V, 1994 WL 1246937 (Fed. Cl. Spec. Mstr. Dec. 2, 1999), involved an 18-month old whose hearing impairment was apparently diagnosed about a month after a DPT vaccination. Again, as here, the vaccinee experienced fever in the 105º range, in that instance about four days after vaccination. In each of those two cases, the special master rejected the claim. The opinions suggest that in each case, as is the case here, there was a lack of medical literature support for the petitioners' basic theory that a DPT vaccination or fever can cause hearing loss.

To be sure, both of those cases involved facts that were different in some respects from this case. In *Zimmer*, one key point was that there was a suspicion of hearing loss even before the vaccination in question. In *Bobbitt*, the vaccinee was younger, and the temporal relationship in that case (the hearing deficiency was not identified until four months after the fever episode) was not nearly as striking as in this case. However, the outcome in these two cases perhaps does provide some slight additional support for my conclusion here.

I note also that one published Program case involved an allegation that a *different* type of vaccination–*i.e.*, the MMR (measles, mumps, rubella) vaccination–caused hearing loss. In that case, too, the special master denied the claim. *Hines v. Secretary of HHS*, No. 89-90V, 1990 WL 608692 (Cl. Ct. Spec. Mstr. June 22, 1990); *aff'd*, 21 Cl. Ct. 634 (1990); *aff'd*, 940 F. 2d 1518 (Fed. Cir. 1991).

7. Summary

For all the reasons set forth above, I conclude that petitioner has failed to demonstrate that it is "more probable than not" that Megan-Rose's hearing impairment was vaccine-caused.

IV

CONCLUSION

The story of the profound hearing deficiency of Megan-Rose Lunn is a very unfortunate one. She and her parents seem to be very fine people, who could certainly use some assistance in their struggle to cope with Megan-Rose's impairment. Congress, however, designed the Program to compensate only those individuals who can demonstrate either the existence of a "Table Injury" or satisfactory evidence of a causal link between an injury and a listed vaccination. And in this case

the petitioner has failed to demonstrate such a link with respect to Megan-Rose's condition, for the reasons discussed above. Therefore, I conclude that petitioner is not entitled to a Program award.[11]

_____
George L. Hastings, Jr.
Special Master

[11]I do note that, despite the petitioner's ultimate lack of success on this claim, I find that this case was brought "in good faith" and upon a "reasonable basis." Accordingly, petitioner will be entitled to an amount of attorneys' fees and costs incurred in this action pursuant to § 300aa-15(e). This amount will be awarded in a supplemental decision after the judgment "on the merits" becomes final. See Vaccine Rule 13.