

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-378V

July 26, 2012

Not for Publication

GRETCHEN ARMSTRONG, a minor, *
by and through her natural mother *
and next friend, PAULA ARMSTRONG, *

Petitioner, *

v. *

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

Respondent. *

William P. Ronan, III, Overland Park, KS, for petitioner.
Debra A. Filteau Begley, Washington, DC, for respondent.

Motion to dismiss; failure
to provide expert evidence
in support of allegation that
Gardasil caused epilepsy

MILLMAN, Special Master

DECISION¹

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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). 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 constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact 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 redact such material from public access.

On July 10, 2011, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa–10-34, alleging that Gardasil vaccine caused her daughter Gretchen’s juvenile myoclonic epilepsy, the onset of which was 19 days after her second vaccination.

On July 26, 2012, petitioner filed a motion for a decision dismissing the petition. Petitioner has not filed any expert medical opinion in support of her allegations although the necessity for doing so was discussed in four status conferences from August 16, 2011 to May 18, 2012. In addition, the medical records do not support her allegations of causation from Gardasil vaccine.

The undersigned grants petitioner’s motion for a decision dismissing the petition.

FACTS

Gretchen was born on December 5, 1993.

On April 11, 2008, she received her first Gardasil vaccination. Med. recs. Ex. 1, at 2.

On June 11, 2008, Gretchen received her second Gardasil vaccination. Id.

On June 30, 2008, Gretchen was taken to Miami County Medical Center where Dr. Kenneth A. Newman noted that Gretchen had a grand mal seizure that day. Med. recs. Ex. 2, at 72.

On July 22, 2009, Dr. John E. Croom, neurologist, diagnosed Gretchen with refractory epilepsy. Med. recs. Ex. 6, at 173. By September 2, 2009, Dr. Croom suspected she had juvenile myoclonic epilepsy. Id. at 175.

DISCUSSION

To satisfy her burden of proving causation in fact, petitioner 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. Sec’y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec’y 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, 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, Gretchen would not have epilepsy, but also that the vaccine was a substantial factor in causing her epilepsy. Shyface v. Sec'y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

Since petitioner filed her petition, she has not provided evidence to make a prima facie case. She has not produced medical records or medical expert opinion to substantiate that Gardasil caused Gretchen's epilepsy. The Vaccine Act does not permit the undersigned to rule in favor of petitioner based only on her allegations unsupported by medical records or medical opinion. 42 U.S.C. § 300aa-13(a)(1).

Petitioner's motion to dismiss is GRANTED.

CONCLUSION

This petition is DISMISSED. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

July 26, 2012
DATE

s/Laura D. Millman
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.