

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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NICOLE MARTINELLI,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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No. 11-469V

Special Master Christian J. Moran

Filed: August 22, 2012

Decision on the record; insufficient  
proof of causation; Gardasil;  
Hodgkin's Lymphoma.

Patricia Leigh O'Dell, Beasley, Allen et al., Montgomery, AL, for petitioner;  
Voris E. Johnson, United States Dep't of Justice, Washington, D.C., for respondent.

### **UNPUBLISHED DECISION DENYING COMPENSATION<sup>1</sup>**

Nicole Martinelli filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 *et. seq.*, on July 20, 2012. Her petition alleged that a series of Quadrivalent HPV vaccinations ("Gardasil") administered to her on February 1, 2007, April 27, 2007, and September 17, 2007, caused her to suffer from Hodgkin's Lymphoma. The information in the record, however, does not show entitlement to an award under the Program.

#### **I. Procedural History**

Ms. Martinelli completed the task of filing relevant medical records on December 9, 2011. Respondent then submitted her Rule 4 report on February 8, 2012. In this report, respondent stated that Ms. Martinelli "has not provided any

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<sup>1</sup> The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this ruling on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

expert medical opinion to support her claim. Nor do the submitted medical records provide any support for petitioner's claim." Respondent recommended that compensation be denied. Resp't Rep't at 12-13.

A status conference was held on February 23, 2012. Ms. Martinelli was ordered to attempt to locate her pre-vaccination records and a VAERS report. She was also ordered to file an expert report. Ms. Martinelli filed these additional medical records on April 5, 2012 (exhibits 9-12). She did not file an expert report.

On May 30, 2012, Ms. Martinelli filed a status report indicating that she had been unable to secure an expert in support of her case. She filed a motion for a ruling on the record on July 27, 2012. This motion referred the undersigned to the medical records filed in the case, which she contends support a ruling in her favor. Respondent filed a response on August 3, 2012, claiming that the medical records are not probative in showing that Ms. Martinelli's condition was caused by the Gardasil vaccine. With the submission of these filings, this case is now ready for adjudication.

## **II. Analysis**

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), petitioner must prove either 1) that Ms. Martinelli suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to her vaccination, or 2) that she suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). There are no injuries associated with Gardasil on the Vaccine Injury Table. See 72 Fed. Reg. 19937. Thus, she is necessarily pursuing a causation-in-fact claim.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, Ms. Martinelli has not identified any specific medical records that support her claim. Her general citation to 12 exhibits is unavailing. See Simanski v. Sec'y of Health & Human Servs., 96 Fed. Cl. 588, 610 (2010), rev'd on other grounds 671 F.3d 1368 (Fed. Cir. 2012). In lieu of citation to specific medical records, Ms. Martinelli may offer a medical opinion. She, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that Ms. Martinelli has failed to demonstrate either that she suffered a “Table Injury” or that her injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/Christian J. Moran  
Christian J. Moran  
Special Master