

OFFICE OF SPECIAL MASTERS

No. 99-610V

June 20, 2006

LOREEN ARTZ,

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Petitioner,

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v.

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Hepatitis B vaccine; did it cause hepatitis, chronic fatigue syndrome, and axonal neuropathy; expert report necessary

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SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

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Respondent.

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ORDER¹

Petitioner filed a petition on her own behalf on August 4, 1999 under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., alleging that a hepatitis B vaccination, which she received on March 28, 1994, caused her an unspecified injury. On that same date, petitioner moved to suspend proceedings for 120 days to substantiate her claim and obtain documents. On September 10, 1999, respondent filed no objection to petitioner's motion

¹ Because this order contains a reasoned explanation for the special master's action in this case, the special master intends to post this order 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 or designated substantive order is filed, petitioner has 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.

subject to petitioner's filing an affidavit within 60 days. On October 6, 1999, the chief special master granted petitioner's motion. On February 3, 2000, petitioner filed a statement that her documentation had been filed and was complete. On April 11, 2000, respondent filed a Rule 4(b) Report, stating that petitioner seeks compensation for chronic fatigue syndrome, fibromyalgia, and neuropathy that hepatitis B vaccine allegedly caused. Respondent requested petitioner to file all medical records pertaining to any claim she made for Social Security Disability benefits, referring to P. Ex. 5, p. 14, where Dr. Carroll M. Leevy refers to a claim. Petitioner filed records from a workers' compensation claim on April 24, 2000. P. Ex. 17.

On May 2, 2000, petitioner filed a status report with the expectation of filing a future motion for summary judgment. On May 22, 2000, petitioner filed her Social Security Administration Decision appeal because of the prior decision that she was not disabled. P. Ex. 18. The Administrative Law Judge found on February 13, 1998 that petitioner had been disabled since April 16, 1996, having chronic fatigue syndrome. She had a long history of abdominal pain and illness that caused her weakness and fatigue. In 1994 and 1995, she repeatedly saw Dr. Kengarajan R. Wignarajan for complaints of abdominal pain and sore throat. He referred her to Dr. Carroll M. Leevy who biopsied petitioner's liver. Dr. Leevy concluded that petitioner's history of chronic hepatitis was possibly secondary to Epstein Barr viral infection and referred petitioner to Dr. Susan M. Levine. Dr. Levine diagnosed petitioner with chronic fatigue syndrome. Petitioner sees Dr. Jay Tendler every two weeks for acupuncture and intravenous vitamin and mineral supplementation. P. Ex. 18, pp. 6-7.

There are additional medical records stating that petitioner developed a neuropathy, fibromyalgia, and chronic fatigue syndrome after her hepatitis B vaccination in 1994. A few

weeks after the vaccination, she initially developed severe right flank pain, which was diagnosed as non-specific hepatitis. There is the question here of a known factor unrelated, Epstein-Barre virus (EBV), which has been causally connected with chronic fatigue syndrome. Med. recs. at Ex. 5, pp. 5, 6.

Causation of petitioner's neuropathy seems problematic. According to Dr. Alexander Mauskop of the New York Headache Center, in a letter to Dr. Susan M. Levine, dated October 19, 1998, petitioner's numbness, paresthesias, and weakness of her arms and legs had been present intermittently for the prior three and ½ weeks. She had a three-week period of similar but milder symptoms in March 1998. Med. recs. at Ex. 6, p. 63. Petitioner's hepatitis B vaccination was administered four years earlier.

The undersigned is aware that Dr. Latov refers to petitioner's hand numbness occurring soon after vaccination which then spread to other areas of petitioner's body in March 1998, but the undersigned does not see any reference to numbness in the Bayonne Hospital ER records on May 3, 1994 (med. recs. at Ex. 15) or anywhere else. Petitioner's visits to Dr. Kanagary Wignarajan, which have a gap from December 24, 1990 to May 9, 1994 (med. recs. at Ex. 2, pp. 6-7), do not reveal any hand numbness during the May 9, 1994 visit. The last visit is October 27, 1997. Med. recs. at Ex. 2, p. 12. Although the handwriting is difficult to decipher, the undersigned does not see hand numbness in any of those notes.

Dr. Maureen S. Cafferty repeats the four-year onset interval between vaccination and neuropathy in a letter to Dr. Levine, dated January 7, 1999. She writes that, in March 1998, petitioner began to experience numbness and tingling in her hands and feet. Med. recs. at Ex. 6,

p. 66. Dr. Mauskop and Dr. Cafferty can only be relying upon petitioner's own history to them in recording onset of her numbness in March 1998.

In May 1998, petitioner had an MRI scan of her brain, showing a left cerebellar venous angioma.² Dr. Cafferty's impression was severe paresthesias and dysesthesias. Petitioner's reflexes were totally intact which went against a diagnosis of significant motor sensory neuropathy. Her EMG findings were normal. Med. recs. at Ex. 6, p. 67.

Dr. Norman Latov, in a record dated January 27, 1999, states that petitioner had EMG and nerve conduction studies in October 1998³ revealing the presence of an axonal neuropathy. Med. recs. at Ex. 6, p. 69. Spinal tap was normal with normal protein. Dr. Latov opined that petitioner might have a small fiber sensory neuropathy which can be associated with fibromyalgia or chronic fatigue syndrome. Med. recs. at Ex. 6, p. 70.

On March 5, 1999, Dr. Latov diagnosed petitioner with large and small fiber sensory neuropathy, probably chronic inflammatory sensory polyneuritis. Med. recs. at Ex. 7, p. 71. Her EMG and nerve conduction tests on February 11, 1999 were normal. Med. recs. at Ex. 12, pp. 17-20. Petitioner underwent Somatosensory Evoked Potentials (SSEP) on February 24, 1999 to rule out demyelinating disease. The results were normal for her brain, arms, and legs. Med. recs. at Ex. 12, pp. 24, 26, 28.

² An angioma is "a tumor whose cells tend to form blood vessels ... or lymph vessels...." Dorland's Illustrated Medical Dictionary, 30th ed. (2003) at 84.

³ Dr. Richard Lechtenberg, on October 21, 1998, writes that conduction velocities of motor signals in the arms were good, but petitioner had no sensory response in the arms or legs. Petitioner did not have a radiculopathy, but there was substantial evidence of a primarily axonal, mixed sensory and motor polyneuropathy affecting the arms and legs. Med. recs. at Ex. 10, p. 2.

Petitioner's neuropathy is apparently not demyelinating and, therefore, the undersigned's holdings in the hepatitis B vaccine-demyelinating diseases Omnibus proceeding regarding GBS, CIDP, TM, and MS are not applicable to this case.

The undersigned is aware that Dr. Latov states, in a letter "To Whom It May Concern," dated March 12, 1999, that petitioner is probably suffering from the sensory form of chronic inflammatory demyelinating polyneuritis (med. recs. at Ex. 23, p. 3), but the undersigned fails to see how petitioner can have a sensory form of CIDP without demyelination. Her EMGs, nerve conduction studies, and SSEPS all ruled out demyelination. One may have a severe form of GBS or CIDP with not only demyelination but also axonal degeneration, but it has never been the undersigned's experience in the Vaccine Program that one can have CIDP with solely axonal degeneration and no demyelination. After all, CIDP stands for chronic inflammatory **demyelinating** polyneuropathy.

Petitioner shall file an expert report in support of her allegations by **July 31, 2006**.

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master