

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-525V

December 17, 2009

To be Published

RICKY and DeSHAWN KHAMIS, as parents *
and Legal Representatives of their Minor Son, *
KHADEN JAMES KHAMIS, *

Petitioners, *
*

v. * Entitlement: influenza vaccine;

SECRETARY OF THE DEPARTMENT OF * 16 days later, Guillain-Barré
HEALTH AND HUMAN SERVICES, * syndrome; respondent asks for
* ruling on the record
*

Respondent. *

Ramon Rodriguez, III, Richmond, VA, for petitioners.
Lisa A. Watts, Washington, DC, for respondent.

MILLMAN, Special Master

RULING ON ENTITLEMENT¹

Petitioners filed a petition on August 11, 2009, under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that influenza vaccine administered on October

¹ 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.

8, 2005 caused their son Kaden James Khamis (hereinafter, “Kaden”) Guillain-Barré syndrome (GBS) whose onset was 16 days later.

On December 8, 2009, respondent filed a Rule 4 Report in which she states at page 5 she will not expend further resources to contest entitlement, but will focus on determining the amount of compensation to be paid petitioners.

During a telephonic status conference on December 16, 2009, respondent requested the undersigned make a ruling on the record.

DISCUSSION

This is a causation in fact case. To satisfy their burden of proving causation in fact, petitioners must offer "(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. Secretary of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary 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[.]”

In Capizzano v. Secretary of HHS, 440 F.3d 1274, 1325 (Fed. Cir. 2006), the Federal Circuit said “we conclude that requiring either epidemiologic studies, rechallenge, the presence of pathological markers or genetic disposition, or general acceptance in the scientific or medical communities to establish a logical sequence of cause and effect is contrary to what we said in Althen. . . .”

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

Petitioners must show not only that but for the vaccine, Kaden would not have had GBS, but also that the vaccine was a substantial factor in bringing about his GBS. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

Respondent has filed a Rule 4 Report in this case stating she intends not to defend on entitlement, hoping to resolve damages and file a proffer. Petitioners have proved causation in fact.

CONCLUSION

Petitioners are entitled to reasonable compensation. The next telephonic status conference is set for Tuesday, February 16, 2010, at 11:30 a.m. (EST), to work on resolving damages.

IT IS SO ORDERED.

December 17, 2009
DATE

s/Laura D. Millman
Laura D. Millman
Special Master