

# In the United States Court of Federal Claims

No. 09-085V

July 21, 2009

Not to be Published

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CHRISTOPHER MAGALHAES, a minor, \*

by his parents and natural guardians, \*

TIFFANY and RODRIGO MAGALHAES, \*

Petitioners, \*

v. \*

SECRETARY OF THE DEPARTMENT \*

OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

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Lawrence R. Cohan, Philadelphia, PA, for petitioners.

Ryan D. Pyles, Washington, DC, for respondent.

Dismissal; six-week interval  
between vaccinations and seizure  
with intervening gastroenteritis

**MILLMAN, Special Master**

## DECISION<sup>1</sup>

Petitioners filed a petition on December 24, 2008 under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that their son Christopher Magalhaes (hereinafter, “Christopher”) had a fever and seizure six weeks after receiving acellular DPT,

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 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.

HiB, and pneumococcal vaccines which were caused by the vaccines. Christopher was diagnosed with a stomach bug or viral gastroenteritis the week before his fever and seizures. The medical records substantiate that he was well until March 21, 2006. The vaccines were administered on February 12, 2006.

During numerous telephonic status conferences, the undersigned stressed to petitioners' counsel that it was unlikely that Christopher's status epilepticus was due to his vaccinations six weeks before instead of the viral gastroenteritis the week before the onset of his seizures. No expert opinion was filed in this case.

On July 16, 2009, petitioners filed a Motion to Withdraw Claim. Their counsel stated:

Upon a thorough review of the medical records Petitioners' counsel has determined that the facts do not support a cause-in-fact claim in the National Vaccine Compensation Program. Counsel has discussed this concern in detail with Petitioners and have obtained their permission to withdraw this claim.

Petitioners' Motion to Withdraw Claim, pp. 1-2.

Petitioners' Motion to Withdraw Claim is granted.

### **DISCUSSION**

To satisfy their burden of proving causation in fact, petitioners 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. 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 1317, 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 vaccinations, Christopher would not have had fever and status epilepticus, but also that the vaccines were substantial factors in bringing about his fever and status epilepticus. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

The viral gastroenteritis which all the treating doctors described in Christopher’s medical records occurred in close proximity to his diarrhea, vomiting, and fever (compared to the vaccinations which occurred six weeks before after which Christopher was well). This known factor unrelated to the vaccinations (the gastroenteritis) is a serious impediment to petitioners’ prevailing in this case. In fact, petitioners have failed to find any medical expert to support their allegations. The Vaccine Act states that the undersigned may not rule in favor of petitioners based solely on their claims alone “unsubstantiated by medical records or by medical opinion.”

442 U.S.C. § 300aa-13(a)(1). Here there are no medical records or medical opinion ascribing Christopher's fever and status epilepticus to his vaccinations.

Petitioner have failed to make a prima facie case and this petition must be DISMISSED. Petitioners' Motion to Withdraw Claim 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 in accordance herewith.<sup>2</sup>

**IT IS SO ORDERED.**

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DATE

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Laura D. Millman  
Special Master

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<sup>2</sup> 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.