

OFFICE OF SPECIAL MASTERS

No. 99-309V

September 7, 2006

MIKE MORRILL,

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Petitioner,

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v.

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Hepatitis B vaccine followed
two or four years later by MS;
too long for causation

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SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

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Respondent.

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ORDER TO SHOW CAUSE¹

Petitioner filed a petition dated May 14, 1999, under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that he received hepatitis B vaccine on April 14, 1993, July 3, 1993, and November 3, 1993. Petitioner has not filed proof of vaccinations.

Petitioner alleges injury from these vaccinations which, in his exhibits 1-3, appears to be multiple sclerosis (MS) with the alternative possible diagnosis of stroke. The onset of the alleged

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.

MS is purportedly 1995 when he had numbness in his left hand and tongue plus dizziness. Or the onset may be in 1997, when he had numerous brain lesions appearing on MRI.

Petitioner is ORDERED TO SHOW CAUSE by **October 13, 2006** why this case should not be dismissed.

DISCUSSION

This is a causation in fact case. To satisfy his burden of proving causation in fact, petitioner 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, supra, at 1149. Mere temporal

association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6th Cir. 1983), cert. denied, 469 U.S. 817 (1984).

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

In Werderitsh v. Secretary of HHS, No. 99-310V, 2006 WL 1672884 (Fed. Cl. Spec. Mstr. May 26, 2006), the undersigned ruled that hepatitis B vaccine can cause MS and did so in that case. The onset interval after hepatitis B vaccination was several days to a week after Mrs. Werderitsh's first vaccination. She had symptoms of transverse myelitis a month after her second vaccination. Respondent's expert, Dr. Roland Martin, testified that the appropriate onset interval, if a vaccination were to cause an acute reaction, would be a few days to three to four weeks. Stevens v. Secretary of HHS, No. 99-594V, 2006 WL 659525, at *15 (Fed. Cl. Spec. Mstr. Feb. 24, 2006).

Here, Mr. Morrill's onset of numbness in his left hand and in his tongue, if those were symptoms of MS, occurred in 1995, two years after his alleged vaccinations. If his symptoms of MS actually began in 1997, that is four years after his alleged vaccinations. Either onset interval is much too long to be a medically-appropriate temporal relationship to posit causation. The undersigned doubts that petitioner will locate an expert to opine that his MS, if that is what he has, was caused by vaccinations that he received two or four years previously.

Petitioner must file an expert report stating that hepatitis B vaccine was a substantial factor in causing his MS by **October 13, 2006** or this case will be dismissed. Petitioner is ORDERED TO SHOW CAUSE why this case should not be dismissed by **October 13, 2006**.

IT IS SO ORDERED.

September 7, 2006
DATE

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