

OFFICE OF SPECIAL MASTERS

No. 05-692V

October 7, 2005

MICHELE VAN ALLEN and NEIL VAN ALLEN, *
as best friends of their daughter, *
KATRINA M. VAN ALLEN, *

Petitioners, *

v. *

Not for Publication

SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *

Respondent. *

John F. McHugh, New York, NY, for petitioners.
Althea W. Davis, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision on the United States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 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.

Petitioners filed a petition dated June 24, 2005, under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., alleging that a hepatitis B vaccination Katrina M. Van Allen (hereinafter, "Katrina") received on August 27, 2002 caused her diabetes type 1 whose symptoms began three days later. Paragraphs 3-5 of Petition.

Petitioners' counsel, in a status conference dated October 7, 2005, stated that petitioners were dismissing because they could not find an expert to support their allegation after consulting with Dr. David Rosenstreich. The undersigned never ordered respondent to file a Rule 4(b) report since petitioners did not make a prima facie case.

FACTS

Katrina was born on March 27, 1990.

She received hepatitis B vaccine on August 27, 2002. Med. recs. at pp. 23-24. She was diagnosed with new onset diabetes type 1 on September 7, 2002. Med. recs. at p. 40

DISCUSSION

Petitioners do not allege a Table injury. Therefore, they must prove their allegations by causation in fact. To satisfy their burden of proving causation in fact, petitioners must offer "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury. A reputable medical or scientific explanation must support this logical sequence of cause and effect." Grant v. Secretary, HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992). Agarwal v. Secretary, HHS, 33 Fed. Cl. 482, 487 (1995); see also Knudsen v. Secretary, HHS, 35 F.3d 543, 548 (Fed. Cir. 1994); Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, supra, 956 F.2d 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).

Petitioners must show not only that but for hepatitis B vaccine, Katrina would not have had diabetes type 1, but also that the vaccine was a substantial factor in bringing about her illness. Shyface v. Secretary, HHS, 165 F.3d 1344 (Fed. Cir. 1999).

Petitioners have not filed any expert medical report supporting their allegations that hepatitis B vaccine caused Katrina's diabetes type 1. Moreover, the medical records do not support their allegations that hepatitis B vaccine caused Katrina's diabetes type 1. The Vaccine Act, 42 U.S.C. §300aa-13(a)(1), does not permit the undersigned to rule in favor of petitioners based solely on their allegations without supporting medical records or medical opinion.

Petitioners have not satisfied their burden of proof. A failure to prosecute their case will lead to dismissal. Hayman v. US, No. 02-725, ___ Fed. Cl. ____ (May 9, 2005) (failure to provide a complete expert report results in dismissal, citing Sapharas v. Sec'y of DHHS, 35 Fed. Cl. 503 (1996); Tsekouras v. Sec'y of DHHS, 26 Cl. Ct. 4439 (1992); and, outside the Vaccine Program context, Claude E. Atkins Enters., Inc. v. US, 899 F.2d 1180 (Fed. Cir. 1990); Adkins v. US, 816 F.2d 1580, 1583 (Fed. Cir. 1987); and Kadin Corp. v. US, 782 F.2d 175, 177 (Fed. Cir. 1986)).

Petitioners have not made a prima facie case that hepatitis B vaccine caused in fact Katrina's diabetes type 1. This petition must be dismissed.

CONCLUSION

Petitioners' petition is dismissed with prejudice. 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.²

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master

² 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.