

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-667V

August 31, 2012

Not for Publication

The Estate of NANCY L. HAYMAN, *
by and through SEAN MASON as *
Personal Representative, *

Petitioner, *

v. *

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

Respondent. *

Isaiah R. Kalinowski, Washington, DC, for petitioner.
Glenn A. MacLeod, Washington, DC, for respondent.

Motion for ruling on the
record; no evidence of flu
vaccination; four or more
months until onset of GBS

MILLMAN, Special Master

DECISION¹

On October 12, 2011, Nancy Hayman filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34, alleging that influenza vaccine which she received

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims' 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 constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact 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 redact such material from public access.

on an unspecified day in February 2011 caused her Guillain-Barré syndrome (GBS), whose onset was on an unspecified day in April 2011, or approximately two months post-vaccination. Pet. ¶¶ 1 and 2.

Mrs. Hayman unfortunately died on October 18, 2011, and on February 7, 2012, petitioner's counsel moved to amend the case caption to indicate that Sean Mason was now petitioner representing Mrs. Hayman's estate. The undersigned granted this motion on February 7, 2012.

On February 9, 2012, the undersigned received a CD containing records in this case. These records show that Mrs. Hayman's onset of GBS was no earlier than the end of June 2011. Med. recs. Ex. 3, at 48 ("in **excellent health** toward the end of June 2011" [emphasis added]). This history came from Mrs. Hayman's daughter Valerie. *Id.* Mrs. Hayman was admitted to St. Vincent's Medical Center on July 5, 2011. She complained of headache, nausea, vomiting and weakness. She did not complain of numbness and tingling. The Medical Center eventually diagnosed her with GBS. Med. recs. Ex. 2, at 55. Presumably, Mrs. Hayman's neurological symptoms began during her hospitalization, leading to the GBS diagnosis.

Petitioner has never filed proof of vaccination. According to the medical records petitioner filed, Mrs. Hayman's onset of GBS was four to five months after her alleged vaccination on some day in February 2011.

On August 29, 2012, petitioner moved for a decision on the written record, stating "it does not appear likely that Petitioner will be able to prove vaccine causation of the injury alleged to a level surmounting the preponderance standard required by the Vaccine Act in this case of an off-Table injury." Petitioner added that he did not "deem it worthwhile to pursue prosecution of the Petition all the way to a hearing with expert witnesses."

Because petitioner has failed to prove that Mrs. Hayman received influenza vaccine and that, assuming she had received it sometime in February 2011, it caused her GBS four to five months later, the undersigned rules that petitioner has filed to make a prima facie case of causation in fact and dismisses this case. The telephonic status conference set for Friday, August 31, 2012, at 12:00 p.m. (EDT), is hereby **CANCELLED**.

DISCUSSION

To satisfy his burden of proving causation in fact, petitioner 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. Sec'y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec'y 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[.]”

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.

Petitioner must show not only that but for the vaccine, Mrs. Hayman would not have had GBS, but also that the vaccine was a substantial factor in causing her GBS. Shyface v. Sec’y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999). He has not done this. Moreover, petitioner cannot demonstrate that Mrs. Hayman received a vaccination on the Vaccine Injury Table as required by 42 U.S.C. § 300aa-11(c)(1)(A).

The Vaccine Act does not permit the undersigned to rule in favor of petitioner based only on his allegations unsupported by medical records or medical opinion. 42 U.S.C. § 300aa-13(a)(1).

In addition, even if petitioner had proved that Mrs. Hayman received flu vaccine, the undersigned has ruled that four months is too long for an appropriate causal relationship between flu vaccine and onset of GBS. Corder v. Sec’y of HHS, No. 08-228V, 2011 WL 2469736 (Fed. Cl. Spec. Mstr. May 31, 2011).

Petitioner’s petition is **DISMISSED**.

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 herewith.²

IT IS SO ORDERED.

August 31, 2012
DATE

s/Laura D. Millman
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.