

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-596V

Filed: June 30, 2016

Unpublished

LEAH MIMS, as mother and natural guardian of minor, J.M., and DONELLE MIMS, as father and natural guardian of minor, J.M.

v. Petitioners,

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

* Ruling on Entitlement; Concession; Measles, Mumps, Rubella, Varicella ("MMRV") Vaccination; Table Injury; Anaphylaxis; Anaphylactic Shock; Special Processing Unit ("SPU")

Jeffrey S. Pop, Jeffrey S. Pop, Attorney at Law, Beverly Hills, CA, for petitioner. Darryl R. Wishard, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On May 19, 2016, Leah Mims and Donelle Mims ("petitioners") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act" or "Program"). Petitioners "request compensation for the death of their minor son J.M., who received Measles-Mumps-Rubella, Varicella, and Influenza vaccinations on October 19, 2015." Petition at 1 (citations omitted). Petitioners allege "[w]ithin minutes of administration of the above stated vaccinations, J.M. suffered from an anaphylactic shock and shortly thereafter passed away." *Id.* Claiming J.M. suffered an injury listed on the Vaccine Injury Table

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

within the time frame specified, petitioners assert a “Table injury” claim. *Id.* at 1, ¶ 17; see 42 C.F.R. § 100.3(a)(III)(A) (2015) (listing the Table injury of anaphylaxis or anaphylactic shock within four hours of receiving any component of the measles, mumps, and rubella vaccine). In the alternative, petitioners allege J.M. suffered an injury which was caused-in-fact by the measles, mumps, rubella, varicella (“MMRV”) and/or influenza vaccinations he received. Petition at 1, ¶ 18. Petitioners further allege neither they nor any other party has ever filed a lawsuit or received compensation for the vaccine related death of their son. *Id.* at ¶¶ 19-20. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 29, 2016, respondent filed her Rule 4(c) report in which she concedes that petitioners are entitled to compensation in this case. Respondent’s Rule 4(c) Report³ at 1-2. Specifically, respondent “concludes that JM’s anaphylaxis resulting in his death meets the Table requirements for the presumptive injury of anaphylaxis, and that compensation should be awarded for his death occurring minutes after vaccination.” *Id.* at 5. Respondent further indicates that “petitioners have satisfied all legal prerequisites for compensation under the Act.” *Id.*

In view of respondent’s concession and the evidence before me, I find that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Respondent filed the Rule 4(c) Report in conjunction with a Proffer, titling the document “VACCINE RULE 4(c) REPORT AND PROFFER ON DAMAGES.”