

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-0946V

Filed: July 31, 2017

UNPUBLISHED

The Estate of ARNOLD LEE MILLER,
Decedent, by and through ARMICKA
S. MILLER, as Personal
Representative,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Ruling on Entitlement; Uncontested;
Causation-In-Fact; Influenza (Flu)
Vaccine; Guillain-Barre Syndrome
(GBS)

*Isaiah Richard Kalinowski, Maglio Christopher & Toale, PA, Washington, DC, for
petitioner.*

Jennifer Leigh Reynaud, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On August 5, 2016, petitioner filed a petition as personal representative for the estate of Arnold Lee Miller for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that the decedent, Arnold Lee Miller, developed Guillain-Barré Syndrome (“GBS”) resulting in his death which was causally related to the influenza vaccine and Prevnar 13 pneumococcal conjugate vaccine he received on November 4, 2015.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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).

Petition at 1, ¶¶ 3, 14-18. Petitioner further alleges that the decedent received the vaccinations in the United States and that neither she nor any other party has brought a civil action or received compensation for decedent's GBS and death, alleged as vaccine caused. Petition at ¶¶ 3, 20-21. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 31, 2017, respondent filed his Rule 4(c) Report stating that he "does not contest entitlement in this matter." Respondent's Rule 4(c) Report at 1. Specifically, he indicates that "[i]t is respondent's position that petitioner has satisfied the criteria set forth in the newly revised Vaccine Injury Table ("Table") and the Qualifications and Aids to Interpretation ("QAI")." *Id.* at 3-4 (footnote omitted). Respondent adds that "[a]lthough the revised Table only governs petitions filed on or after the effective date of the final rule,³ the evidence shows that petitioner suffered GBS following the administration of a seasonal flu vaccine, and that the onset occurred within the time period specified in the Table." *Id.* at 4. Respondent concludes that because petitioner would be entitled to a presumption of causation under the revised Table if he simply re-filed his petition, respondent "will not contest entitlement to compensation in this case." *Id.* (citation omitted).

In view of respondent's position and the evidence of record, the undersigned finds that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Originally, the effective date for the new rule was February 21, 2017. Revisions to the Vaccine Injury Table, 82 Fed. Reg. 6294 (Jan. 19, 2017) (to be codified at 42 C.F.R. pt. 100). This effective date was delayed until March 21, 2017. Delay of Revisions to the Vaccine Injury Table, 82 Fed. Reg. 11321 (Feb. 22, 2017) (to be codified at 42 C.F.R. pt. 100).