

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1349V

Filed: August 4, 2020

UNPUBLISHED

A.W., by her parent and natural
guardian, AMBER WILSON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

Petitioner's Motion for Decision
Dismissing Petition; Measles
Mumps Rubella Vaccine
(MMR); Type 1 Diabetes

*Renee J. Gentry, Vaccine Injury Clinic, George Washington Uni. Law School,
Washington, DC, for petitioner.*

Lynn Christina Schlie, U.S. Department of Justice, Washington, DC, for respondent.

DECISION¹

On September 27, 2017, petitioner filed a claim under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34 (2012), alleging that her child suffered adverse reactions, including Type 1 diabetes, weight loss and abdominal pain as a result of her receipt of the MMR vaccinations on October 11, 2014 and September 15, 2015. (ECF No. 1.) On May 22, 2018, respondent filed his Rule 4 report, recommending against compensation. (ECF No. 16.)

On September 20, 2018, petitioner filed an expert report from Dr. Francis W. Ruscetti. (ECF No. 21.) In response, respondent filed an expert report from Dr. Noel Kieth Maclaren and Dr. Penelope A. Morel. (ECF Nos. 27, 28.) Petitioner filed a supplemental expert report from Dr. Ruscetti. (ECF No. 36.) This case was reassigned

¹ Because this decision contains a reasoned explanation for the special master's action in this case, it will be posted on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. See 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the Internet.** 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 the special master, upon review, agrees that the identified material fits within this definition, it will be redacted from public access.

to my docket on June 5, 2019. (ECF No. 39.) Subsequently, respondent filed supplemental expert reports. (ECF Nos. 41, 42.)

On August 3, 2020, petitioner filed a Motion for a Decision Dismissing the Petition. (ECF No. 48.) Petitioner indicated that “[a]n investigation of the facts and science supporting has demonstrated to the Petitioner that they will be unable to prove . . . entitled to compensation in the Vaccine Program,” and that “to proceed any further would be unreasonable and would waste the resources of the Court, the respondent, and Vaccine Program.” (*Id.* at 1.) Petitioner further stated that “[p]etitioners understand that a decision by the Special Master dismissing their petition will result in a judgment . . . [and] have been advised that such a judgment will end all of their rights in the Vaccine Program.” (*Id.*) Respondent does not oppose the motion but does reserve the right to question the good faith and reasonable basis for the filing of this petition in opposition to any motion for attorneys’ fees and costs. (*Id.* at 1-2.) “The petitioners do intend to protect their rights to file a civil action in the future,” and “they intend to elect to reject the Vaccine Program judgment against his and elect to file a civil action.” (*Id.*)

To receive compensation in the Vaccine Program, petitioner must prove either (1) that he suffered a “Table Injury” – *i.e.*, an injury falling within the Vaccine Injury Table – corresponding to a covered vaccine, or (2) that he suffered an injury that was actually caused by a covered vaccine. See §§ 13(a)(1)(A) and 11(c)(1). To satisfy the burden of proving causation in fact, petitioner must show 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 Health & Human Servs.*, 418 F.3d 1274, 1278 (Fed. Cir. 2005). The Vaccine Act, 42 U.S.C. § 300aa-13(a)(1), prohibits the undersigned from ruling for petitioner based solely on his allegations unsubstantiated by medical records or medical opinion.

A.W.’s medical records do not support petitioner’s allegations by a preponderance of the evidence. Although petitioner offered a medical opinion from Dr. Ruscetti, the medical opinion did not provide persuasive evidence supporting a finding of entitlement. Moreover, in this case, respondent filed competing medical opinions in the form of persuasive expert reports refuting petitioner’s allegations. See *de Bazan v. Sec’y of Health & Human Servs.*, 539 F.3d 1347 (Fed. Cir. 2008) (Respondent’s evidence that bears on petitioner’s burden to prove a *prima facie* case should be considered even when the burden has not shifted to respondent).

Accordingly, the undersigned **GRANTS** petitioner’s Motion for Decision Dismissing Petition and **DISMISSES** this petition for insufficient proof.

CONCLUSION

This case is now **DISMISSED**. The clerk of the court is directed to enter judgment in accordance with this decision.²

IT IS SO ORDERED.

s/Daniel T. Horner
Daniel T. Horner
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.