

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1663V

Filed: May 23, 2018

UNPUBLISHED

WENDI WALTER and PHILLIP
WALTER, on behalf of M.W., a minor
child,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Rotavirus Vaccine;
Intussusception

*Diana Lynn Stadelnikas, Maglio Christopher & Toale, PA, Sarasota, FL, for petitioner.
Lynn Elizabeth Ricciardella, U.S. Department of Justice, Washington, DC, for
respondent.*

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On November 2, 2017, 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”). Petitioners allege that their minor child, M.W., suffered an intussusception as a result of his Rotarix, Prevnar 13, HiB, DTaP, Hepatitis B and IPV vaccinations received on October 26, 2016. See Petition at 1-2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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).

On May 21, 2018, respondent filed his Rule 4(c) report in which he concedes that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, respondent

has reviewed the facts of this case and concluded that petitioners' claim meets the Table criteria for intussusception occurring within one to twenty-one days after a rotavirus vaccination. 42 C.F.R. § 100.3(a)(XI). Specifically, M.W.'s intussusception manifested approximately five days after his receipt of the first dose of the rotavirus vaccine, and there is not preponderant evidence that his condition was due to a factor unrelated to the vaccine. See *id.*; 42 U.S.C. § 300aa-13(a). Moreover, as discussed above, M.W.'s intussusception "resulted in inpatient hospitalization and surgical intervention." See 42 U.S.C. § 300aa-11(c)(1)(D)(iii). Therefore, petitioners are entitled to a presumption of causation under the Vaccine Act.

Id. at 4. Respondent further agrees that "[w]ith respect to other statutory and jurisdictional issues, the records show that the case was timely filed and that the vaccine was received in the United States. See 42 U.S.C. §§ 300aa-11(c). Petitioners aver that no civil action or proceedings have been pursued in connection with M.W.'s vaccine-related injury. Petition at 3." *Id.*

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