

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1682V

UNPUBLISHED

CHARLES EDWARDS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 26, 2023

Special Processing Unit (SPU);
Pneumococcal Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA); Vaccine Not
Covered Under the Program;
Vaccine Act Entitlement;

*William Ralph Layne Walker, Jr., The Walker Law Firm, PLLC, Beaumont, TX, for
Petitioner.*

Katherine Carr Esposito, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION¹

On November 24, 2020, Charles Edwards (“Petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). The Petition alleges that Mr. Edwards suffered a shoulder injury related to vaccine administration (“SIRVA”) “resulting from a Pneumococcal conjugate vaccine he received on November 29, 2017.” Petition at 1. While the Court of Federal Claims cover sheet indicated this claim was a “453 Injury –

¹ Because this unpublished decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling 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, upon review, I agree that the identified material fits within this definition, I 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 section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Pneumococcal Conjugate” case, the vaccine received by Mr. Edwards was instead Pneumovax 23, a pneumococcal polysaccharide vaccine. Exhibit 13 (ECF No. 13-7) at 1; Ex. 15 (ECF No. 21) at 2, 4.

Following two motions for extensions (ECF Nos. 10, 18) a statement of completion was filed on August 16, 2021 (ECF No. 23) and was activated on August 18, 2021. ECF No. 26.

On August 9, 2022, Respondent filed a status report stating that he completed his medical review of the claim. ECF No. 38. Respondent noted that Petitioner received an uncovered vaccine that is not listed on the Vaccine Injury Table, and therefore there is no reasonable basis to proceed.

On August 10, 2022, I issued an Order to Show cause informing Petitioner that the polyvalent pneumococcal vaccination, Pneumovax 23, is not covered under the Vaccine Program. ECF No. 39. I also provided him an opportunity to offer evidence as to why his Petition should not be dismissed.

As I explained in my Order to Show Cause, in order to receive compensation under the Vaccine Act, a petitioner must show that he received a vaccine set forth in the Vaccine Injury Table (the “Table”). See Section 11(c)(1)(A); 42 C.F.R. § 100.3 (2017). “There are two types of pneumococcal vaccines ... pneumococcal conjugate and polysaccharide vaccine[s].” *Bundy v. Sec’y or Health & Hum. Servs*, No. 12-769V, 2014 WL 348852, at *1 (Fed. Cl. Spec. Mstr. Jan. 8, 2014). But only pneumococcal conjugate vaccines, routinely administered to children, are covered by the Vaccine Program. *Id.*; see also *Morrison v. Sec’y of Health & Hum. Servs*, No. 04-1683V, 2005 WL 2008245, at *1 (Fed. Cl. Spec. Mstr. July 26, 2005) (describing how and when pneumococcal conjugate vaccines were added to the Vaccine Table).

On October 11, 2022, Petitioner filed a response to the Order to Show Cause, arguing that this case not be dismissed “for the sake of justice, equity and fairness.” ECF No. 41. Petitioner argues that, according to the Centers for Disease Control and Prevention (“CDC”), if a pneumococcal conjugate vaccine is administered to an elderly patient, a polysaccharide vaccine should follow....” *Id.* at 2. Further, it is Respondent’s burden “to prove the ‘follow up’ dose was inappropriate and thus not covered...”

Mr. Edwards unquestionably received a pneumococcal polysaccharide vaccine, Pneumovax 23, on November 29, 2017. Ex. 15 (ECF No. 21) at 4. The Pneumococcal 23-polyvalent vaccine does not appear in the Table and is therefore not covered by the Program.³ As such, he is unable to show that he “received a vaccine set forth in the

³ National Vaccine Injury Compensation Program: Addition of Pneumococcal Conjugate Vaccines to the Vaccine Injury Table, 66 Fed. Reg. 28166 (May 22, 2001) (“[t]hrough this notice, pneumococcal conjugate vaccines are now included as covered vaccines under Category XIII of the Table. Because the CDC only

Vaccine Injury Table.” Section 11(c)(1)(A). Thus, Petitioner cannot receive compensation on a claim based on a non-covered vaccine through the Vaccine Program, and the petition must be dismissed. See, e.g., *Venable v. Sec’y of Health & Hum. Servs.*, No. 19-1620V, 2020 WL 1486858, at *1 (Fed. Cl. Feb. 19, 2020) (dismissing petition that involves Pneumovax); *Patterson v. Sec’y of Health & Hum. Servs.*, No. 20-1562V, 2022 WL 497336, at *1 (Fed. Cl. Jan. 18, 2022) (dismissing petition that involves Pneumovax); *Cielencki v. Sec’y of Health & Hum. Servs.*, No. 15-632V, 2015 WL 10767150, at *3 (Fed. Cl. Spec. Mstr. Dec. 22, 2015) (dismissing petition that involves Pneumovax).

Petitioner has failed to demonstrate that he received a vaccine covered under the Vaccine Program. **This case is therefore dismissed for failure to state a claim upon which relief can be granted.**

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

recommended pneumococcal conjugate vaccines to the Secretary for routine administration to children, polysaccharide-type pneumococcal vaccines are not covered under the VICP or included on the Table.”