

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-1611V

UNPUBLISHED

EDNA FOWLER, executrix of the
estate of WILLIAM FOWLER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 17, 2023

Non-Table vaccine; Show Cause;
Shingles vaccine

Braden A. Blumenstiel, The Law Office of DuPont and Blumenstiel, Dublin, OH, for
Petitioner.

Heather L. Pearlman, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION¹

On July 26, 2021, Edna Fowler filed a petition for compensation on behalf of the estate of William Fowler under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa—10 through 34² (the “Vaccine Act”). Petitioner alleged that Mr. Fowler suffered injuries due to a Shingrix (shingles) vaccination he received on July 25, 2018. ECF No. 1. Petitioner did not identify the vaccine administrator (or the corresponding medical records) in the petition or affidavit.³

In order to receive compensation under the Vaccine Act, Petitioner must show that Mr. Fowler received a vaccine set forth in the Vaccine Injury Table (the “Table”). See § 11(c)(1)(A); 42 C.F.R. § 100.3(a). Petitioner indicated that the shingles vaccine is listed on the Table. ECF No. 1 ¶ 5. However, as explained below, shingles vaccines are not included within the varicella vaccines designation on the Table.

¹ Because this 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 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, 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 “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

³ In addition, Petitioner has not yet filed exhibits 2 or 7-10. Because this case has the jurisdictional defect of a non-covered vaccine, it is not necessary to consider the un-filed exhibits.

Chickenpox vaccines are understood to be the “varicella vaccines” listed on the Table. See 26 U.S.C, § 4132(a)(1)(K). Shingles vaccines have been distinguished from chickenpox vaccines in previous decisions dismissing petitions seeking compensation for injuries from a shingles vaccine. See *Scanlon v. Sec’y of Health & Hum. Servs.*, No. 13-219V, 2013 WL 5755061 (Fed. Cl. Spec. Mstr. Sept. 27, 2013), *aff’d*, 114 Fed. Cl. 135 (2013); *Nilsen v. Sec’y of Health & Hum. Servs.*, No. 10-110V, 2010 WL 1753471 (Fed. Cl. Spec. Mstr. Apr. 6, 2010); *Doe/44 v. Sec’y of Health & Hum. Servs.*, No. [redacted]V, 2009 WL 3124758 (Fed. Cl. Spec. Mstr. Sept. 25, 2009); *Doe/47 v. Sec’y of Health & Hum. Servs.*, No. [redacted]V, 2009 WL 3416368 (Fed. Cl. Spec. Mstr. Sept. 10, 2009).⁴ As summarized in one opinion affirming a special master’s dismissal of a shingles vaccine claim, “[e]ven though the shingles vaccine is a type of ‘varicella vaccine,’ it is routinely administered to adults, the Secretary has never added it to the Vaccine Injury Table, and no excise tax has been imposed upon it.” *Scanlon*, 114 Fed. Cl. at 143.

On December 2, 2022, I issued an Order to Show Cause for why Petitioner’s claim should not be dismissed for lack of jurisdiction over the vaccine in question. The show cause deadline passed without any response from Petitioner.

Petitioner has failed to establish that Mr. Fowler received a vaccine covered by the Vaccine Program. **Accordingly, this case is DISMISSED. The clerk shall enter judgment accordingly.**⁵

IT IS SO ORDERED.

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

⁴ See Shingrix official website at www.shingrix.com (“SHINGRIX is an FDA-approved vaccine for the prevention of shingles (herpes zoster) in adults 50 years and older. SHINGRIX is not used to prevent chickenpox.”); Center for Disease Control and Prevention (CDC) website at <https://www.cdc.gov/vaccines/vpd/shingles/public/shingrix/index.html> (describing the recombinant zoster vaccination).

⁵ If Petitioner wishes to bring a civil action, she must file a notice of election rejecting the judgment pursuant to § 21(a) “not later than 90 days after the date of the court’s final judgment.”