

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 21-2306V

UNPUBLISHED

CLARENCE CHERRY, as  
administrator of ESTATE OF MARK A.  
CHERRY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: November 18, 2022

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Guillain-Barre Syndrome (GBS)

*Howard Dale Mishkind, Mishkind Law Firm Co., L.P.A., Beachwood, OH, for Petitioner.*

*Alexa Roggenkamp, U.S. Department of Justice, Washington, DC, for Respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

On December 20, 2021, Clarence Cherry, as administrator of the Estate of Mark A. Cherry, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that his brother, Mark A. Cherry, suffered Guillain-Barré Syndrome (“GBS”) which meets the Table definition for GBS or, in the alternative, was caused-in-fact by the influenza (“flu”) vaccine he received on September 27, 2019. Petition at 1, 5, ¶ 3. Petitioner also alleges that Mark Cherry received the flu vaccine within the United States, that he passed away due to his GBS injury, and that neither he nor any other party has filed a civil action or

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<sup>1</sup> Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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). **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.

<sup>2</sup> 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).

received compensation for his GBS. *Id.* at ¶¶ 3, 16-18. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 17, 2022, 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 believes "that [P]etitioner has satisfied the criteria set forth in the revised Vaccine Injury Table ("Table") and the Qualifications and Aids to interpretation ("QAI")." *Id.* at 6.

**In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master