

The Secretary filed his Rule 4(c) Report on January 18, 2024, recommending that the case be dismissed. The Secretary argued that Ms. Taylor had not offered a reputable scientific or medical theory establishing that the rotavirus vaccine can cause intussusception 58 days after vaccination, and noted that none of C.T.'s treating physicians opined that the vaccine could or did cause the intussusception. Resp't's Rep. at 6. The Secretary characterized the 1-21 day onset of intussusception on the Vaccine Table as "likely overbroad" in light of the more common 1-7 day onset, and disputed that it would be medically acceptable to infer causation-in-fact from C.T.'s onset after 58 days. Given this delayed interval, the Secretary questioned whether there was reasonable basis to proceed. *Id.* at 7 n.6. The Secretary also argued that Ms. Taylor had not submitted preponderant evidence to establish any of the Loving prongs, nor identified a preexisting condition that was allegedly significantly aggravated by the vaccine. *Id.* at 5-6 n.5.

Concurrently with his Rule 4(c) Report, the Secretary filed a Motion to Dismiss, incorporating the arguments from his Report. On January 26, 2024, Ms. Taylor filed a status report advising that she did not anticipate finding a supportive expert. In a status conference on February 6, 2024, Ms. Taylor confirmed that she was not able to find an expert, and asked that the Motion to Dismiss be decided.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), a petitioner must prove either 1) that the vaccinee suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations, or 2) that the vaccinee suffered an injury that was actually caused by a vaccine. *See* §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1).

Here, the evidence weighs against a finding that C.T.'s intussusception was caused by the rotavirus vaccination, or that he had an underlying condition that was significantly aggravated by the vaccination. The medical records and affidavits place onset at March 14, 2022, which was 58 days after C.T. received the rotavirus vaccine. This falls well outside of the Vaccine Table's timeframe of 1-21 days. Ms. Taylor has therefore not carried her burden under Althen prong three. *See Carda on behalf of G.J.C. v. Sec'y of Health & Hum. Servs.*, No. 14-191V, 2017 WL 6887368, at *21-22 (Fed. Cl. Nov. 16, 2017) (56 days between rotavirus vaccine and intussusception was not a medically appropriate timeframe). An analysis of the other Althen prongs is not necessary. *See W.C. v. Sec'y of Health & Hum. Servs.*, 704 F.3d 1352, 1358 (Fed. Cir. 2013) (because a petitioner must establish all three prongs, failure to establish one prong necessarily implies a petitioner cannot establish causation under Althen).

Thus, the Motion to Dismiss is GRANTED and this case is DISMISSED WITH PREJUDICE for insufficient proof. The Clerk shall enter judgment accordingly. See Vaccine Rule 21(b).

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master