

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 24-1340V

UNPUBLISHED

CHARLOTTE MESIMORE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 10, 2024

Stephanie B. Rubin, Rubin & Machado, Ltd., Chicago, IL, for Petitioner.

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

DECISION¹

On August 28, 2024, Charlotte Mesimore filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa—10 through 34 (the “Vaccine Act”).² Petitioner alleges that she suffered a shoulder injury due to a pneumococcal polysaccharide vaccination, Pneumovax, that she received on January 12, 2022. ECF No. 1 at 1; exhibit 1 at 52, 54 (vaccination record); exhibit 2 at 332 (first treatment record).

In order to receive compensation under the Vaccine Act, petitioners must show that they received a vaccine set forth in the Vaccine Injury Table (the “Table”). See § 11(c)(1)(A); 42 C.F.R. § 100.3. Pneumococcal polysaccharide vaccines are not included on the Table.

“There are two types of pneumococcal vaccines . . . pneumococcal conjugate and polysaccharide vaccine[s]. The polysaccharide vaccine is distributed under the brand name Pneumovax.” *Bundy v. Sec’y of Health & Human Services*, No. 12-769V, 2014 WL 348852, at *1 (Fed. Cl. Spec. Mstr. Jan. 8, 2014). Only pneumococcal conjugate vaccines, routinely administered to children, are covered by the Vaccine

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).

Program. *Id.*; see *Morrison v. Sec’y of Health & Human Services*, 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). Because Petitioner received a pneumococcal polysaccharide vaccine, this claim is not covered by the Vaccine Program and she cannot receive compensation based on this vaccine

On September 9, 2024, 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.**³

IT IS SO ORDERED.

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

³ 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.”