

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-1716V

Filed: September 19, 2017

UNPUBLISHED

JEANETTE KUHL, on behalf of  
E.K., Minor Vaccinee,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Rotavirus Vaccine;  
Intussusception

*Terry Allen Dawes, McKeen & Associates, Detroit MI , for petitioner.*

*Amy Paula Kokot, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On December 29, 2016, petitioner 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 that E.K.’s receipt of a rotavirus vaccine on or about October 28, 2015, caused him to suffer intussusception.<sup>3</sup> Petition at 1-2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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). 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, the undersigned agrees that the identified material fits within this definition, the undersigned 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 “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

<sup>3</sup> E.K.’s vaccination record lists an administration date of October 29, 2015. See, e.g., Petitioner’s Exhibit (“Pet. Ex.”) 5 at 2, 17.

On September 19, 2017, 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 "has concluded that petitioner is entitled to a presumption of causation because E.K.'s intussusception meets the criteria of the Vaccine Injury Table. *Id.* at 4 (citing 42 C.F.R. § 100.3(a)(XI)). Respondent further agrees that E.K.'s intussusception "resulted in inpatient hospitalization and surgical intervention." *Id.* (quoting 42 U.S.C. § 300aa-11(c)(1)(D)(iii)).

**In view of respondent's position and the evidence of record, the undersigned finds that petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master