

OFFICE OF THE SPECIAL MASTERS

No. 90-3314V

(Filed on: August 31, 1998)

CHARLES L. HENKEL, JR., and *
KATHRYN HENKEL, Parents and Next *
Friends of KRISTY M. HENKEL, *

Petitioners, * **TO BE PUBLISHED**

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

Edward I. Allen, Fredericksburg, VA, for petitioners.

Karen P. Hewitt, Washington, DC, for respondent.

DECISION AND ORDER

MILLMAN, Special Master.

Statement of the Case

The above-captioned matter was part of the cases pending during the undersigned's Omnibus TS hearing dated October 8-11, 1996 and June 3-4, 1997. Subsequent to my decision in the Omnibus case, dated September 15, 1997, ⁽¹⁾ the court determined what course to follow in this individual case.

Respondent challenges whether Kristy M. Henkel (hereinafter "Kristy") experienced the onset of her seizures within Table time of her DPT vaccination. The court held a hearing on March 13, 1998 to determine this issue. Testifying for petitioners were Kathryn Henkel, Hope D. Farr, and Charles L. Henkel, Jr. Respondent did not call any witnesses.

FACTS

Kristy was born on May 7, 1980. Med. recs. at p. 1. On May 19, 1980, she saw the pediatrician because she was fussy and she was not sleeping. Med. recs. at p. 15. She returned to the pediatrician on May 22, 1980 because she had vomited twice in twelve hours. Id. During a June 4, 1980 visit, Mrs. Henkel told the doctor that Kristy burped frequently and still had a lot of gas. Id. His impression was that she swallowed air. Id.

Kristy received her first DPT vaccination on July 10, 1980 when she was two months old. Id. She returned to the doctor on August 11, 1980. Id. During this visit, Mrs. Henkel reported that Kristy was crying a lot. Id. On August 26, 1980, Kristy went to the doctor because she was fussy and had a rash. Med. recs. at p. 16.

Kristy received her second DPT vaccination on September 9, 1980 when she was four months old. Id. She returned to the doctor on September 12, 1980. Id. At this visit, Mrs. Henkel reported that Kristy was having two to three hour episodes of continual, inconsolable screaming. Id. She also wanted to eat every two hours. Id.

On October 3, 1980, Kristy went to the doctor due to congestion. Med. recs. at p. 17. Mrs. Henkel gave

a history that Kristy was having unusual spells for two weeks which had increased in frequency. Id. During these episodes, which lasted for five to ten seconds, Kristy would arch her back and roll her eyes. Id. The doctor wondered whether she was experiencing seizure activity. Id.

On October 7, 1980, Kristy had an EEG, which was abnormal, showing epileptogenic discharges. Med. recs. at p. 18. Mrs. Henkel gave a history of irritability, colic, and feeding problems. Id. The history further reflects that Kristy had recurrent episodes of straightening and arching during which her eyes rolled back. Id. These episodes lasted for fifteen seconds. Id.

On October 10, 1980, Kristy went to Dr. Richard G. Hunter at Waynesboro Community Hospital. Med. recs. at pp. 29-32. Mrs. Henkel gave a history that Kristy had an unusual cry from birth. Med. recs. at p. 29. Initially, this cry was suspected to be secondary to thrush. Id. The history notes that Kristy would cry so intensely that Mrs. Henkel could not get her attention. Id. She would scream for up to eight hours and would not respond to her environment. Id. The history also reflects that Kristy never slept through the night. Id. She would awaken screaming. Id. Eventually, her crying tapered off and new spells began during which there was an interruption of attention. Id.

The history further states that Kristy had a swallowing problem and pulled her right ear a lot. Id. She had staring spells and the right corner of her mouth drooped. Id. Kristy would hold her breath until she became apneic and blue. Id. She was slow with attaining her milestones. Id. She had been having episodes during which she would throw both hands over her head in extension, extend her head, and roll her eyes. Id. Postictally, she was limp, wobbly, fussy, and often slept. Id. Although Dr. Hunter did not observe seizure activity, he suspected that Kristy had multiple subclinical seizures. Med. recs. at p. 31.

During Dr. Leggett's examination of Kristy, she had at least three to four episodes of staring which lasted for approximately five to ten seconds. Med. recs. at p. 33. She was unresponsive to stimuli. Id. Dr. Leggett recorded a history that Kristy was colicky and continuously cranky and fussy from birth. Med. recs. at p. 34. She never slept through the night. Id. Approximately three weeks earlier, ⁽²⁾ Kristy began having strange episodes which had increased in intensity and frequency. Id. The record further notes that she had received two DPT vaccinations. Med. recs. at p. 35. She had a family history of seizures. Id.

On November 6, 1980, Dr. John W. Rose, a neurologist, diagnosed Kristy with TS. Med. recs. at p. 19. On November 7, 1980, Kristy saw Dr. William G. Wilson, a pediatrician, at the University of Virginia Hospital. Med. recs. at p. 45. Mrs. Henkel gave a history that Kristy was about four and one-half months of age⁽³⁾ when she began exhibiting frequent crying, loss of attention, intermittent swallowing problems, and occasional pulling at her left ear. Id. She subsequently developed a different form of seizure which appeared to be more myoclonic. Id. During these seizures, she would throw both hands over her head and extend her head. Id. These episodes would occur up to twelve times per day. Id.

On November 13, 1980, Kristy saw Dr. F.E. Dreifuss, a pediatric neurologist. Med. recs. at p. 47. Mrs. Henkel gave a history that Kristy's seizures began at four months. Id. Since the seizures began, her neurological development had been slow. Id. The seizures came in clusters, appearing to be massive extension spasms, and occurred near the time when Kristy would awaken. Id. She had up to thirty seizures during an episode. Id.

On November 17, 1980, Kristy had an EEG which was normal. Med. recs. at p. 20. Her hypersarrhythmia had resolved. Id.

On August 14, 1981, Dr. Wilson received a history that Kristy had had a reaction to one of her two DPT vaccinations. Med. recs. at p. 54. He prescribed that she was not to receive pertussis. Id.

A record dated January 7, 1982 notes that Kristy's medication had been stopped as she was no longer having seizures. Med. recs. at p. 26. She was retarded in speech, mental, motor, and fine coordinated movement fields. Id.

On March 1, 1982, an EEG was conducted which was normal. Med. recs. at p. 27. From March 28 to 29, 1982, she was hospitalized at University of Virginia Hospital. Med. recs. at pp. 58-59. Dr. Stephen M. Paridon wrote a history that Kristy had infantile-type seizures at four months of age. Med. recs. at p. 58.

On December 12, 1984, Dr. Albert L. Huber, an allergist, noted that Kristy's spasms began after her second DPT vaccination. Med. recs. at 315. Mrs. Henkel wrote on the patient information chart that Kristy had an allergic reaction to her first DPT, manifested by a rash on her entire body. Med. recs. at p. 313. She further noted that Kristy had spasms after her second DPT. Id.

On May 4, 1988, Dr. Thomas J. Spicuzza, a neurologist, wrote a history that Kristy was allergic to pertussis vaccine. Med. recs. at p. 120.

On May 3, 1990, Kristy had an MRI which showed multiple lesions.⁽⁴⁾ Med. recs. at p. 91. On May 17, 1990, Dr. Dreifuss noted that Kristy had a large number of hematomas. Med. recs. at p. 94.

On November 13, 1991, an MRI was conducted which showed that Kristy had subependymal nodules and cortical tubers. Med. recs. at 278. The August County School Board Sociocultural Evaluation, dated January 3, 1992, notes that Kristy had a high fever with high-pitched screaming after her first DPT. Med. recs. at p. 535. It further reflects that she had encephalitis, high fever, and infantile spasms after her second DPT. Id. Although Kristy had not had seizures since she was three years old, some seizure activity was suspected in November or December 1991. Id. She had fine and gross motor delay. Id.

The medical record from February 16, 1993 notes that Kristy had taken seizure medication until she was two or three years old; however, since that time, she had not taken any anticonvulsants. Med. recs. at 391.

TESTIMONY

Kathryn Henkel testified first for petitioners. Mrs. Henkel stated that Kristy did not sleep well during her first week and one-half of life because she was nursing. Tr. at 18-19. She had thrush on her tongue for which she received medication. Tr. at 17, 19. The medication resolved her thrush but also resulted in greenish, odorous stools. Tr. at 19.

Before vaccination, Kristy's health and development was seemingly normal with the exception of her confusing days and nights. Tr. at 19-20. At approximately six to eight weeks of age, she rolled from her stomach to her back, and reached for objects. Tr. at 20.

Mrs. Henkel testified that Kristy was fussy prior to her vaccination. Tr. at 21. Mrs. Henkel believed that her fussiness was due to the thrush. Id. Kristy developed some colic and she had gas. Id. She also vomited. Id. Her doctor believed that the vomiting was caused by intolerance to her thrush and bowel medications. Tr. at 21-22.

On July 10, 1980, Kristy had her two-month visit with her pediatrician, Dr. Kappes, during which she received her first DPT vaccination. Tr. at 19, 22-23. She also had a diaper rash. Tr. at 22-23.

After the first DPT, Kristy was very unhappy. Tr. at 24. She seemed miserable. Id. She broke out with a peppery rash⁽⁵⁾ on her entire body and her vaccine site was hard and pea-sized. Tr. at 24, 26. Mrs. Henkel thinks that Kristy had a low grade temperature. Tr. at 24. Kristy became very irritable.⁽⁶⁾ Tr. at 26. She had two crying spells. Tr. at 37.

Following the first vaccination, Mrs. Henkel called Dr. Kappes' office. Tr. at 25. She was told that Kristy probably had roseola for which cortisone cream was prescribed. Id.

Mrs. Henkel did not think that Dr. Kappes took her seriously. Tr. at 26-27. He said that Kristy could have had a virus. Tr. at 27. Mrs. Henkel further stated that visits to Dr. Kappes are not noted in his medical records. Tr. at 29. She testified that she called Dr. Kappes twice during the evening of the first DPT vaccination. Tr. at 31.

By two and one-half months of age, Kristy's thrush was resolved. Tr. at 35-36. Thereafter, her burping and bowel problems improved. Tr. at 35-36. Neither the thrush nor Kristy's stomach problems were fully resolved prior to the first vaccination. Tr. at 35.

Mrs. Henkel did not want Kristy to receive a second DPT vaccination. Tr. at 38. Dr. Kappes reiterated the importance of vaccination as well as the necessity of such for school attendance. Id. He reassured her that Kristy probably had a virus when she received the first DPT. Id.

During either the day of or the day after vaccination, Kristy's entire body was red as if she had been severely burned. Tr. at 40-41. Kristy had never before experienced this. Tr. at 41. This lasted for approximately one week. Tr. at 69. When it began to heal, her skin peeled akin to a sunburn. Id.

After her second DPT, Kristy's temperature reached almost 101 degrees Fahrenheit. Tr. at 44. She was crankier than she had been following her first DPT. Tr. at 46. Thereafter, Kristy's crying transformed into a blood-curdling scream. Tr. at 48. It was hard and piercing and she was inconsolable. Tr. at 48-49. She would not look at Mrs. Henkel. Id. Over the next twenty-four hours, Kristy screamed continuously. Tr. at 50. Her screaming had many levels, including intervals where she became quiet and unresponsive. Id. Her vaccine site was extremely hard. Tr. at 51. She was sweaty and limp. Id. She did not respond to auditory or visual stimulus, i.e., a phone ring, objects shown to her. Tr. at 57-59. She nursed and slept less. Tr. at 60. Mrs. Henkel called the Emergency Room on September 10 or 11, 1980. Tr. at 52-53.

On September 11, 1980, Kristy began jerking. Tr. at 61. Her whole body stiffened, her arms raised, her legs were drawn to her chest, and she flopped up and down. Id.

On September 12, 1980, Steve Eppard, Mrs. Henkel's brother, visited. Tr. at 62. When Mrs. Henkel described Kristy's jerking episodes to Mr. Eppard, he stated that he thought Kristy was having seizures. ⁽⁷⁾ Tr. at 63. That day, Mrs. Henkel took Kristy to Dr. Kappes. Id. Dr. Kappes called the motions "baby play." Tr. at 63-64.

After seeing Dr. Kappes, Mr. and Mrs. Henkel timed Kristy's seizures, calculating that she seized every thirty seconds. Tr. at 64.

By October 10, 1980, Kristy was admitted to Waynesboro Community Hospital. Tr. at 78. The history given upon admission to the hospital reflects that Kristy had an unusual cry from birth.⁽⁸⁾ Tr. at 78. Mrs. Henkel testified that Kristy's crying spells occurred after her DPT. Tr. at 79.

Currently, Kristy seizes; however, she stopped taking seizure medication in 1983. Tr. at 92, 160. She is a senior in high school and wants to become a teacher. Tr. at 95. Eastern Mennonite College has accepted her into its learning disabled program. Tr. at 103.

Kristy has numerous allergies, particularly to medications. Tr. at 115. She has terrible allergic reactions which include rashes, diarrhea, itching, and swelling of the throat and face. Tr. at 116-17. She did not, however, have a reaction to her DT vaccination. Tr. at 105-08. Mrs. Henkel, her husband, and her son also have allergies. Tr. at 125-26.

Hope Farr testified next for petitioners. Mrs. Farr is a neighbor of the Henkels and has known them for nineteen years. Tr. at 205. She started babysitting Kristy two weeks before Kristy received her first DPT vaccination. Tr. at 206.

Mrs. Farr testified that Kristy slept poorly. Tr. at 207. She neither cried nor had problems with gas, vomiting, or burping. Id. She did, however, have episodes of fussiness. Tr. at 207-08.

After the first DPT, Kristy had a red rash over her entire body which lasted for two or three days. Tr. at 208, 211. She was screaming and crying. Id.

Between her first and second vaccinations, Kristy's crying worsened. Tr. at 209. Her irritability increased and her sleeping worsened. Tr. at 211.

Following her second DPT, Kristy looked as if she had either scarlet fever or were sunburnt.⁽⁹⁾ Id. This was different from the rash which she had after her first DPT. Id. Her skin was raised and peeling. Id. She was afebrile. Tr. at 216. This lasted for approximately two to three days after the vaccination. Tr. at 212. Kristy's screaming also worsened after her second DPT and she began having seizures during which she raised her arms. Tr. at 209-10. However, Mrs. Farr stated that the seizure she witnessed did not occur within the first three days after Kristy's second vaccination. Tr. at 214, 216.

Charles Henkel testified next for petitioners. From birth to her first DPT, Kristy was normal except that she confused her days and nights. Tr. at 224-25. After her first DPT, she had discomfort. Tr. at 225. Two to three days later, she was normal. Id. She cooed, smiled, and recognized her parents. Id.

Mr. Henkel stated that Kristy screamed inconsolably during the evening of her second DPT. Tr. at 225-26. She also looked sunburnt for approximately forty-eight to seventy-two hours. Tr. at 231. The day after vaccination, Kristy either screamed or was lethargic. Tr. at 226. Mrs. Henkel continually called Dr. Kappes who stated that Kristy's behavior was unusual baby play. Id. Mr. Henkel further testified that Kristy had a seizure two to three days after receiving her second DPT. Tr. at 227.

Other Evidence

Petitioners submitted the affidavit of Steve Eppard, Mrs. Henkel's brother, dated May 5, 1998. Med. recs. at pp. 954-55. He states that he saw Kristy on September 12, 1980 at which time she appeared abnormal. Med. recs. at p. 955. Mr. Eppard likened her to a rubber doll because her head would flop from side to side and she was lethargic. Id. He had never seen Kristy exhibit these symptoms and urged

Mrs. Henkel to take her to the doctor. Id.

Petitioners also submitted the medical report from treating neurologist, Dr. F.E. Dreifuss, dated November 20, 1995. P. submission (filed December 4, 1995). Dr. Dreifuss reiterates Dr. Kappes' records, noting that Kristy had continuous problems with sleeping. P. Submission at p. 1 (filed December 4, 1995). Kristy's fussiness continued after her first DPT vaccination. Id. After her second DPT, she screamed continually and inconsolably. Id. A record from October 10, 1980 notes that Kristy had unusual spells for two weeks, consisting of five to ten second episodes of back arching during which her eyes rolled back. Id. A CT scan done on October 13, 1980 showed calcifications indicating TS. Id.

Records from the pediatric specialty clinic state that Kristy had unusual activity consisting of frequent crying, and loss of attention at approximately four and one-half months of age. Id. Dr. Dreifuss' records, however, reflect seizure onset at four months of age, followed by slowed neurological development. Id. Thereafter, Kristy also had difficulty sitting, was no longer able to roll over, and was less attentive. P. Submission at pp. 1-2 (filed December 4, 1995).

Dr. Hunter's history of October 10, 1980 suggests an early-onset seizure problem with retarded milestone development and breath-holding until Kristy became apneic and blue. P. Submission at p. 2 (filed December 4, 1995). It further notes that Kristy manifested clusters of extensor-type spasms. Id.

In Dr. Dreifuss' opinion, Kristy had seizures of some type prior to her second DPT vaccination. Id. After her second DPT, extensor spasms appeared. Id. Dr. Dreifuss believes that Kristy's inconsolable screaming after her second vaccination is "a relatively frequent sequel to DPT inoculation." Id. Following this vaccination, infantile spasms manifested. Id.

Dr. Dreifuss found interpretation of the events difficult inasmuch as "there was no clear relationship between the DPT inoculation and the commencement of a new neurological symptom though there appears to have been an exacerbation at about this time and the development of a new seizure type." Id. He also states that "the situation is not as clear-cut as would at first appear because of the history of preexisting encephalopathy." Id.

Respondent submitted a report from Dr. Charles R. Fitz, dated January 22, 1997, stating that Kristy has four cortical tubers. R. Ex. S.

Respondent also submitted the declaration of Dr. William C. Kappes, Jr., dated May 7, 1998. R. Ex. X. Dr. Kappes states that he saw Kristy on May 19, 1980, May 22, 1980, June 4, 1980, June 9, 1980, July 10, 1980, and August 11, 1980. R. Ex. X at pp. 1-2.

During the July 10, 1980 visit, Kristy received her first DPT vaccination. R. Ex. X at p. 2. Dr. Kappes states that the Henkels never reported any adverse reaction to the vaccination. Id. On August 26, 1980, his associate, Dr. John A. Leggett, saw Kristy for a rash. ⁽¹⁰⁾ Id.

Dr. Leggett saw Kristy on September 9, 1980, for her four-month visit, at which time she received her second DPT vaccination. Id. Her physical examination was normal. Id.

Dr. Kappes saw Kristy on September 12, 1980. Id. Mrs. Henkel told Dr. Kappes that Kristy was extremely irritable, having two- to three-hour screaming bouts. R. Ex. X at pp. 2-3. Dr. Kappes further states that he knows the clinical manifestations of seizures and has heard many parents describe them throughout his thirty-seven years as a pediatrician. R. Ex. X at p. 3. Based on his September 12, 1980 notes and Mrs. Henkel's description, he does not believe that Kristy had seizures on September 12, 1980.

Id.

On October 3, 1980, Dr. Leggett saw Kristy. Id. During this visit, he recorded that she had had unusual spells for two weeks during which her back arched and her eyes rolled back. Id. However, there was no tonic-clonic activity or crying. Id. Based on the October 3, 1980 description as well as the symptoms recorded on September 12, 1980, Dr. Kappes does not think that Kristy was having seizures when he saw her on September 12, 1980. Id. What Mrs Henkel described to Dr. Leggett on October 3, 1980 was different from what she described to Dr. Kappes on September 12, 1980. Id.

Respondent also submitted the declaration of Dr. John A. Leggett, dated May 28, 1998. R. Ex. Y. He states that he saw Kristy for a rash on August 26, 1980 and August 29, 1980. R. Ex. Y at p. 1.

Dr. Leggett also saw Kristy on September 9, 1980 for her four-month visit. Id. She had a history of sleep problems, but her physical examination was normal. R. Ex. Y at p. 2. She received her second DPT during this visit. Id.

Dr. Leggett states that it was his practice then, as it is now, to inquire whether a child had any reaction, such as fever or fussiness, to a previous immunization prior to administering a subsequent vaccination. Id. If the parents of a vaccinee expressed to him extreme reservations about receiving DPT or reported a prior reaction, he would have withheld the pertussis component, administering only a DT vaccination. Id. He also would have informed the parents that DPT can cause fever and fussiness, suggesting that Tylenol be administered to the vaccinee. Id.

Dr. Kappes saw Kristy on September 12, 1980. Id. Kristy saw Dr. Leggett again on October 3, 1980 at which time he recorded a history of unusual spells which had begun two weeks earlier.⁽¹¹⁾ Id. When Dr. Leggett told the Henkels that the spells they described could be seizures, they were very emotional and hard to console.⁽¹²⁾ R. Ex. Y at p. 3. Dr. Leggett read Dr. Kappes' declaration and agrees with it. Id.

Respondent also submitted the report of Dr. Mary Anne Guggenheim, dated May 30, 1995. R. Ex. Q. Dr. Guggenheim is a pediatric neurologist. R. Ex. R. She states that, based on her review of the records, Kristy's seizures began some time between September 15th and 20th. R. Ex. Q at p. 1. She further notes that Dr. Dreifuss is "an internationally renowned pediatric neurologist who specializes in childhood epilepsy. He is highly respected, very experienced, and ... carefully obtains a history and communicates with families." R. Ex. Q at p. 2. In Dr. Guggenheim's opinion, Kristy's neurological problems are due to TS. R. Ex. Q at p. 3.

DISCUSSION

If the onset of Kristy's seizures occurred within Table time of either of her DPT vaccinations, petitioners benefit from the statutory presumption that DPT caused the seizures. It does not, however, automatically prove that petitioners prevail on a theory of on-Table significant aggravation.

Based on the medical records,⁽¹³⁾ the court holds that Kristy's seizure onset began more than three days after her second DPT vaccination. The court notes with interest that Dr. Leggett's history from October 10, 1980 records that Kristy had two DPT vaccinations. If Kristy were having unusual movements or

"strange episodes" immediately following her second DPT, this would have been the appropriate time for Mrs. Henkel to so inform Dr. Leggett.

Well-established case law holds that information in contemporary medical records is more believable than that produced years later at trial. United States v. United States Gypsum Co., 333 U.S. 364, 396 (1948); Burns v. Secretary, HHS, 3 F.3d 415 (Fed. Cir. 1993); Ware v. Secretary, HHS, 28 Fed. Cl. 716, 719 (1993); Estate of Arrowood v. Secretary, HHS, 28 Fed. Cl. 453 (1993); Murphy v. Secretary, HHS, 23 Cl. Ct. 726, 733 (1991), aff'd, 968 F.2d 1226 (Fed. Cir.), cert. denied sub nom. Murphy v. Sullivan, 113 S. Ct. 263 (1992); Montgomery Coca-Cola Bottling Co. v. United States, 615 F.2d 1318, 1328 (1980). Contemporaneous medical records are considered trustworthy because they contain information necessary to make diagnoses and determine appropriate treatment. Cucuras v. Secretary, HHS, 993 F.2d 1525, 1528 (Fed. Cir. 1993):

Medical records, in general, warrant consideration as trustworthy evidence. The records contain information supplied to or by health professionals to facilitate diagnosis and treatment of medical conditions. With proper treatment hanging in the balance, accuracy has an extra premium. These records are also generally contemporaneous to the medical events.

The court is struck with the gradual change in the histories that Mrs. Henkel gave to doctors. While Mrs. Henkel initially indicated that seizure onset occurred in mid-September, she told Dr. Spicuzza in 1988 that Kristy was allergic to pertussis vaccine. By 1992, she informed the August County School Board that Kristy had encephalitis, high fever, and infantile spasms after her second DPT. Based on the medical records as well as Drs. Kappes' and Leggett's declarations, the court finds it quite a stretch to conclude that Kristy had encephalitis after her second DPT.

Kristy did have a reaction to both DPT vaccinations. Apparently, she is allergic to many substances including medicines.⁽¹⁴⁾ Her rash and redness are clearly manifestations of this allergic reaction. However, this is not the same as a neurological reaction.

Kristy's screaming is also unconvincing proof of a neurological reaction because ample histories reflect that Kristy has been crying and fussy from birth. The court believes Dr. Dreifuss' opinion that although Kristy's inconsolable screaming is related to her second DPT, it has no neurological significance. Dr. Dreifuss further stated that Kristy's infantile spasms began after her crying spells, thereby putting seizure onset in mid-September. Interestingly, he also thought that Kristy had begun seizing before she received her second DPT vaccination.

The court is also struck with Mrs. Henkel's dramatic testimony of her battle with Dr. Kappes not to have Kristy receive her second DPT. The record shows that Dr. Leggett, not Dr. Kappes, was the doctor who saw Kristy the day her second immunization was given. Moreover, Dr. Leggett's affidavit reflects that when a parent vociferously objects to her child's receiving pertussis, he would withhold it. The court finds Dr. Leggett to be credible.

Mrs. Henkel testified that Dr. Kappes' records omit numerous office visits. The court considers this highly unlikely. It is apparent that an inimical relationship existed between the two doctors, Dr. Kappes and Dr. Leggett, and the Henkels. While the former found the Henkels to be emotional and overreactive, the latter found the doctors to be unsympathetic.

Had the histories the Henkels gave to other doctors, particularly to Dr. Dreifuss, been totally discordant with the records of Drs. Kappes and Leggett, the court would find the pediatricians' records and

subsequent declarations to be suspect. However, the records are wholly consistent, indicating that Kristy was a difficult child from birth who screamed constantly. She had transient adverse reactions to both DPTs as reflected by her symptoms of crying, redness, and slight fever. However, her underlying medical condition, TS, is the cause of her problems, as concluded by Drs. Dreifuss and Guggenheim.

Dr. Dreifuss stated that there was no clear relationship between Kristy's second DPT vaccination and the manifestation of new neurological problems. Obviously, Kristy's condition was worsening during this time period; however, this degeneration was a product of her TS.

It is clear that, even if Kristy's onset of seizures were within Table time of either of her DPT vaccinations, the opinion of her own pediatric neurologist, Dr. Dreifuss, would not enable petitioners to prevail. Yet, we need not reach that point because the court holds that the predominance of credible evidence indicates that Kristy's seizures began after Table time from her second DPT.

The court understands how difficult it is for parents to accept that their child's dramatic reactions to DPT are unrelated to her underlying neuropathy. However, the evidence does not support petitioners' allegations. Petitioners have not proven a prima facie case of on-Table onset.

CONCLUSION

This petition is dismissed with prejudice. In the absence of a motion for review filed pursuant to RCFC Appendix J, the

clerk of the court is directed to enter judgment in accordance herewith.

IS SO ORDERED.

DATED: Laura D. Millman

Special Master

1. Barnes et al. v. Secretary, HHS, 1997 WL 620115 (Fed. Cl. Spec. Mstr. Sept. 15, 1997). The holding of the Barnes decision is discussed infra.
2. Three weeks prior to October 10, 1980 would be September 21, 1980 which is twelve days after Kristy's second DPT vaccination.
3. Kristy received her second DPT vaccination at four months of age. One-half month later would put onset at two weeks post-vaccination.
4. These results are similar to the findings on her June 6, 1988 MRI.
5. Although Mrs. Henkel does not know exactly how long Kristy's rash lasted, she recalls that it was gone by Labor Day of 1980. Id.
6. Mrs. Henkel stated that Kristy's irritability gradually became worse after the first vaccination;

however, it eventually improved prior to her second vaccination. Tr. at 32-33.

7. Mr. Eppard did not, however, actually see Kristy seize, making this conclusion solely based on what Mrs. Henkel described to and imitated for him. Tr. at 65.

8. At trial, Mrs. Henkel testified that this history was incorrect. Tr. at 79. Although Kristy was fussy from thrush, she did not have an unusual cry. Id.

9. Mrs. Farr noticed this approximately one to two days after the second vaccination. Tr. at 210-11.

10. She was again seen by Dr. Leggett for a rash on August 29, 1980. R. Ex. X at p. 2.

11. This history would place the onset of her seizures after the September 12, 1980 visit.

12. In his notes from this visit, he wrote "parents all spastic." R. Ex. Y at p. 3.

13. The court particularly refers to the records of Dr. Kappes on September 12, 1980, Dr. Leggett on October 3, 1980, Drs. Hunter and Leggett on October 10, 1980 at Waynesboro Community Hospital, and Dr. Wilson on November 7, 1980 at the University of Virginia Hospital.

14. Mrs. Henkel testified that Kristy was allergic to her thyroid medication, Advil, ragweed, chocolate, Koolaid, cigarette smoke, mold, and mildew. Tr. at 116-17.