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Vaccine Court Awards Millions to Two Children With Autism

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The federal Vaccine Injury Compensation Program, better known as "vaccine court," has just awarded millions of dollars to two children with autism for "pain and suffering" and lifelong care of their injuries, which together could cost tens of millions of dollars.

The government did not admit that vaccines caused autism, at least in one of the children. Both cases were "unpublished," meaning information is limited, and access to medical records and other exhibits is blocked. Much of the information presented here comes from documents found at the vaccine court website.

Some observers will say the vaccine-induced encephalopathy (brain disease) documented in both children is unrelated to their autism spectrum disorder (ASD). Others will say there is plenty of evidence to suggest otherwise.

What's more, these cases fit the pattern of other petitions, (i.e., Poling and Banks) in which the court ruled (or the government conceded) that vaccines had caused encephalopathy, which in turn produced permanent injury, including symptoms of autism and ultimately an ASD diagnosis.

And most of these children now have taxpayer dollars earmarked for applied behavioral analysis (ABA), an effective therapy specifically designed to treat ASD.

Meanwhile, parents, grandparents, friends and neighbors of both children testified they were developmentally normal, if not advanced for their age when they developed seizures, spiking fevers and other adverse reactions to their vaccines. According to these eyewitnesses, the children never fully recovered, and instead began losing vocabulary, eye contact and interest in others around them, all classic symptoms of regressive autism.

In the first case, involving a 10-year-old boy from Northern California named Ryan Mojabi, the parents allege that "all the vaccinations" received from 2003-2005, and "more specifically, measles-mumps-rubella (MMR) vaccinations," caused a "severe and debilitating injury to his brain, described as Autism Spectrum Disorder ('ASD')."

The parents, who did not want to be interviewed, specifically asserted that Ryan "suffered a Vaccine Table Injury, namely, an encephalopathy" as a result of his MMR vaccination on December 19, 2003. ("Table injuries" are known, compensable adverse reactions to immunizations.)

Alternatively, they claim that "as a cumulative result of his receipt of each and every vaccination between March 25, 2003 and February 22, 2005, Ryan has suffered . . . neuroimmunologically mediated dysfunctions in the form of asthma and ASD."

In vaccine court, the U.S. Department of Health and Human Services acts as the defendant and Justice Department attorneys act as counsel.

In 2009, Ryan's case was transferred to vaccine court's Autism Omnibus Proceedings, according to the docket. A year-and-a-half later, the government conceded that MMR vaccine had indeed caused Ryan's encephalopathy.

HHS agreed that "Ryan suffered a Table injury under the Vaccine Act -- namely, an encephalitis within five to fifteen days following receipt," of MMR, records show. "This case is appropriate for compensation."

Whether HHS agreed with Ryan's parents that his vaccine-induced brain disease led to ASD is unknown. The concession document is under seal.

In December 2003, when Ryan was nearly two, he received his first MMR and hepatitis B vaccines before his family left for an extended trip overseas. That day, his mother testified, Ryan began shaking with uncontrollable tremors and "was really uncomfortable, he didn't feel well at all."

The nurse at Ryan's pediatrician said the symptoms were "pretty normal after the vaccination," and advised Tylenol. The next day, Ryan began crying, "but it's not a normal crying," his mother testified. "He didn't go to sleep, he was without energy."

The family considered postponing their holiday, but that wasn't feasible. The doctor's office said it was fine to travel. Prior to leaving, Ryan's mother said, the boy had difficulty breathing and "was without energy and sleepy." He could no longer hold his head up, something "he could do prior to the vaccinations." At the airport, Ryan began "screaming," she recalled. "He was just opening and closing his eyes so hard, he was pulling my hair."

After his shots, she added, Ryan "stopped saying those words that he had, even mommy and daddy, that he had repeated a hundred times before."

In early January, while still abroad, Ryan was rushed to the hospital with vomiting, high fever and red spots covering his body "from head to toe in a measles-like rash," the attending physician said. Ryan was diagnosed with "febrile convulsion, probably related to MMR."

The next day, another doctor diagnosed him with "high fever, skin rash, tremors, and lethargy," which were "most likely due to an adverse reaction to multiple vaccines he received earlier."

Two days later, Ryan returned to the hospital with a persistent fever of 104 or more.

Ryan's parents testified that, upon returning home, they expressed worry to their pediatrician about behavioral problems, non-responsiveness and language loss, which later produced an ASD diagnosis.

At trial, however, the government argued powerfully that written medical records, and the recollections of Ryan's doctor, were inconsistent with his parents' testimony. If Ryan had truly suffered an MMR encephalopathy, for example, his family would never have taken him overseas. And his parents' complaints of ASD symptoms were raised a full year after returning from abroad, they alleged. It looked like the family had a weak case.

But then something changed.

In October, 2010, Ryan's attorney filed four new exhibits (under seal) and proposed amending the court's "findings of fact." In January and May of 2011, several more exhibits were filed, along with a motion to further supplement the findings of fact.

A month later HHS conceded the case, which moved into the damages phase.

Award details were announced a few days ago: A lump sum of \$969,474.91, to cover "lost future earnings (\$648,132.74), pain and suffering (\$202,040.17), and life care expenses for Year One (\$119,302.00)," plus \$20,000 for past expenses.

Another undisclosed sum, several millions more, will be invested in annuities to cover yearly costs for life, which could total \$10 million or more, not accounting for inflation. Nearly \$80,000 was earmarked for ABA in the first two years.

The second case involves a girl named Emily, whose mother, Jillian Moller, filed back in 2003 and has been fighting in vaccine court since. The docket, crammed with 188 items, documents Moller's extended but victorious struggle to win compensation for Emily, who has seizure disorder and PDD-NOS, a form of ASD.

Moller alleged that Emily was severely injured by a reaction to the DTaP vaccine at 15 months (when MMR, HiB and Prevnar were also given). "She had a vaccine reaction and she just spiraled out of control," Moller said in an interview.

Emily's fever spiked to 105.7 and she began screaming. She stared blankly and developed seizures. Before long she began "shaking episodes" at night and "repetitive behaviors, including arm flapping and spinning," court documents show. Like Ryan, she developed a measles-type rash.

Things went from bad to worse. Emily's medical record is filled with damage and suffering. One neurologist, for example, noted that Emily "had staring spells and an abnormal EEG." Another diagnosed "encephalopathy characterized by speech delay and probable global developmental delay that occurred in the setting of temporal association with immunizations as an acute encephalopathy."

Moller filed for an encephalopathy Table injury in 2003, unaware her daughter would be diagnosed with ASD.

Two hearings were held in 2005. "I was badgered and harassed for four hours on the stand," she said. "They said Emily couldn't have been that sick, or else I would've taken her to the ER. But I took her to my doctor and he said not to bring her to the hospital!"

Government lawyers insisted that Emily had suffered neither a vaccine injury nor encephalopathy. But every alternative cause they suggested "made no sense, because she showed no signs of those things before that vaccination," Moller said.

The case dragged on for years, with motions and counter-motions, status reports and expert medical reports. In 2007, Moller filed for summary judgment. That also took years, as more medical records were submitted to bolster Emily's case.

After the ASD diagnosis, the judge reportedly became convinced that Emily would prevail. "My attorney said she was angry, she felt forced into a corner with no choice but to find for us," Moller said. "She said, 'Emily has autism, and I don't want to give other families who filed autism claims any hope.'"

The government agreed to settle. Last spring the case went into mediation and, on December 3 HHS made its proffer, which was entered into the record on the 28th. Emily was awarded a lump sum of \$1,030,314.22 "for lost future earnings (\$739,989.57), pain and suffering (\$170,499.77) and life care expenses for Year One (\$119,874.88) plus \$190,165.40 for past expenses." Some of that money will go to ABA therapy.

Based on the first year payout, another estimated \$9 million will buy annuities for annual expenses through life, which after inflation has the potential to pay over \$50 million dollars.

HHS did not admit that vaccination caused encephalopathy or autism, but merely decided not to dedicate more resources to defending the case.

"I don't understand why they fought so hard," Moller said. "We had the evidence: the EEG, the MRI, everything was consistent

with encephalopathy, post-vaccination. How can government attorneys claim what our doctors said happened, didn't happen?"

Perhaps the feds were loath to concede yet another vaccine case involving autism. Four cases in the Autism Omnibus Proceedings were recently compensated. Three of those cases are marked with asterisks, indicating the government did not conclude that autism can be caused by vaccines. But the fourth autism case that was paid out in 2013 (Ryan's case? We don't know) has no such caveat.

As for Emily, she is "not too good," Moller said. "Her emotional state is fragile, at best. She has seizure problems and autoimmune issues... And it's a constant fight when you have a vaccine-injured child. It's not just the disability, it's the ignorance. The hatred from the medical community towards families like ours is intense."

Meanwhile, as HHS says it "has never concluded in any case that autism was caused by vaccination," it is still underwriting autism treatments such as ABA for children in its vaccine-injury program.