

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ERICA SAMP, an individual
[REDACTED]

Plaintiff,

v.

ROBERT F. KENNEDY, Jr.,
in his official capacity as
**Secretary U.S. Department of
Health and Human Services**
200 Independence Ave, S.W.
Washington, D.C. 20201,

Defendant.

**COMPLAINT FOR DECLARATORY
RELIEF FOR VIOLATION OF THE
ADMINISTRATIVE PROCEDURE ACT
(5 U.S. Code §706(1))**

1. Under the Public Readiness and Emergency Preparedness (“PREP”) Act,¹ those injured by vaccines, medications, devices, or other items used to prevent, diagnose, or treat a public health emergency or a security threat cannot take legal action against the United States government and statutorily specified individuals and entities. Instead, those injured must first apply for compensation in the Countermeasures Injury Compensation Program (“CICP”), administered by the Health Resources and Services Administration (“HRSA”) – a sub-agency of

¹ 42 U.S.C. §§ 247d–6d, and 247d–6e.

the U.S. Department of Health and Human Services (“HHS”). This no-fault system was designed to compensate individuals injured by medical countermeasures, but, as shown herein, is woefully defective and deficient, and individuals, like Plaintiff Erica Samp, have suffered as a result of the program’s failures.

2. One of the important ways in which CICP is defective is that no HHS Secretary in the five years since the inception of the COVID-19 public health emergency has promulgated, as required by law, a Countermeasures Injury Table (“Injury Table”). 42 U.S. Code § 247d-6e (b)(5)(a). The Injury Table identifies injuries associated with the “covered countermeasures,” detailing the countermeasures, the established injuries, and a time frame from exposure to the onset of injury. This table is critically important in alleviating the burden of proof for those with “on table” injuries, carrying with it the presumption that the countermeasure caused the injury. In the absence of a table injury, the burden on a CICP applicant is much higher. With no Injury Table in place when her claim was filed and despite her serious physical injuries – including encephalopathy (brain swelling), vascular swelling and leaking, and both vision and hearing loss – immediately following vaccination, Ms. Samp was denied compensation in the CICP.

3. As discussed below, the HHS Secretary has a strict, non-discretionary obligation to promulgate this Injury Table, but each Secretary since Former HHS Secretary Alex Azar declared the COVID-19 public health emergency on January 31, 2020 – which Former HHS Secretary Xavier Becerra extended to December 31, 2029 – has not met this mandate.

4. Plaintiff suffered harm from the HHS Secretaries’ collective failure to perform their absolute duty to establish the COVID-19 Countermeasures Injury Table. Plaintiff therefore sues the current HHS Secretary, in his official capacity, for a violation of the Administrative

Procedure Act, 5 U.S. C. § 706(1), and asks this Court to “compel agency action unlawfully withheld or unreasonably delayed.” *Id.*

PARTIES

5. Plaintiff, Erica Samp resides in [REDACTED]. She was severely injured beginning May 19, 2021, the day she received her first Moderna COVID-19 vaccine, and again further injured by her second shot on June 24, 2021. On February 22, 2022, Ms. Samp (formerly known as Erica Bleuer) filed a CICP application (Case No.: CICP2202230016). Her claim was filed within CICP’s one-year filing deadline. As required, her application included all medical records subsequent to her receiving the vaccines; all hospital records for treatment occurring on or after the date of administration of the vaccines; and, all medical records for one year prior to the dates on which she received the vaccines. She submitted these records, as required, to show her medical history prior to and following vaccination. HRSA denied her claim on November 20, 2024, finding “there is not compelling, reliable, valid, medical and scientific evidence that [the Moderna mRNA COVID-19 vaccines directly caused the injuries.]” (See Attachment 1 p. 8-9.) There was no Countermeasure Injury Table in place for COVID-19 countermeasures at that time (or anytime to date).²

6. Ms. Samp has standing to bring this action because she has suffered concrete physical and economic injuries as a result of the failure of any HHS Secretary to promulgate the mandatory Injury Table; her injuries are traceable to HHS’s failure to promulgate an Injury

² HRSA Countermeasures Injury Compensation Program (CICP)
<https://www.hrsa.gov/cicp?fbclid=IwAR0->

Table; and a favorable judgment would likely redress her injuries, and could allow her to reenter the program once an Injury Table is promulgated, as allowed under the law.

7. Defendant, Robert F. Kennedy, Jr., is sued in his official capacity as the current Secretary of the United States Department of Health & Human Services.

JURISDICTION

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) as this action arises under the Constitution and laws of the United States.

9. This Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

10. Venue is proper in this District under 28 U.S.C. § 1391(e)(1)(A) since Defendant is the Secretary of HHS, which maintains its headquarters in Washington, D.C.

11. This Court has authority to award attorney fees and costs pursuant to 28 U.S.C. § 2412(b) and 28 U.S.C. §§ 1331 and 1343 (federal question).

FACTS

12. Under section 319 of the Public Health Service Act,³ the HHS Secretary may determine that a disease or disorder presents a public health emergency. Once the HHS Secretary declares

³ <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap6A-subchapII-partB-sec247d.htm>

an emergency, the PREP Act's protections are activated. No court has subject matter jurisdiction to review the HHS Secretary's emergency declarations.⁴

13. After the COVID-19 emergency was declared, the PREP Act requires that the HHS Secretary establish an Injury Table. No HHS Secretary, including the current Secretary Robert F. Kennedy, Jr., has ever established a COVID-19 Countermeasures Injury Table since the COVID-19 emergency was declared over five years ago. Secretaries Azar, Becerra, and Kennedy all failed to promulgate the required Injury Table.

14. To apply for CICIP compensation, a claimant must file a request for benefits within one year of the date the countermeasure was administered. Erica Samp filed her claim on February 22, 2022, within one year of her first Moderna vaccine on May 19, 2021.

15. While her CICIP case was pending, Erica Samp sent several emails to various HRSA officials between March 17, 2023, and October 23, 2024, to remind them that the Injury Table had not been established as required by law.

16. No Injury Table was in place, however, when HRSA denied Plaintiff's claim on November 20, 2024, alleging that she had not established that the vaccines had caused her injuries. Without an Injury Table, CICIP applicants must prove through proffered evidence – such as expert witness testimony, medical records, and medical opinion – that the countermeasure caused the applicant's injury or condition. Absent an Injury Table, applicants cannot benefit from a presumption that the medical countermeasure caused their injuries. Given the opaque manner in which the program is administered, it is impossible to know what perceived

⁴ 42 U.S.C. § 247d-6d(b)(7).

deficiencies precluded compensation as there is essentially no opportunity to challenge a CICP decision.

17. However, HRSA’s denial of Ms. Samp’s claim does not bar her reapplication to the CICP when the required Injury Table is published: “If the Secretary publishes a new Countermeasure Injury Table, a newly eligible claimant may file within one year after the new table is established.”⁵ Thus, when an Injury Table is promulgated, and if causation of her particular injuries is presumed, Ms. Samp could become a newly eligible applicant who could file within the additional one-year time period.

18. Pursuant to 42 U.S.C. § 247d-6e(b)(5)(A), the Injury Table shall identify covered injuries. “Covered Injury means serious physical injury or death.” 42 U.S.C. § 247d-6e(e)(3). Plaintiff Samp suffered serious physical injury since, among her other serious ongoing Moderna COVID-19 vaccine adverse events, she has suffered vision loss and is preventing blindness through “medical intervention... to preclude permanent impairment of a body function.” 42 U.S.C. § 247d-6d(i)(10)(C). Since the onset of her visual injury started almost immediately following vaccination, the timing of her injury will certainly qualify it as a table injury. Likewise, her other injuries – hearing loss, encephalopathy, vascular leakage, and swelling – also are very serious and should qualify.

⁵ Congressional Research Compensation Programs for Potential COVID-19 Vaccine Injuries
https://www.congress.gov/crs_external_products/LSB/PDF/LSB10584/LSB10584.3.pdf
(at p. 3)

19. Moreover, once an Injury Table is promulgated, table injuries “shall be presumed to be directly caused by the covered countermeasure.”⁶ If the first symptom of table injuries and/or conditions occurs within the table’s specified time periods and the injury meets the definition included in the Injury Table, it is presumed that the vaccine caused the injury or condition unless another cause is proven. With an Injury Table in place, Ms. Samp could be “newly eligible” and would have an additional year to reapply to CICP. Causation should be presumed based on the fact that the onset of her injuries occurred almost immediately after she received her first Moderna shot. Without the mandatory Injury Table in place, HRSA cannot definitively state that Ms. Samp’s injuries are not on the table. Her injury is immediate, ongoing, and caused by Defendant’s continued inaction.

20. On or about 2022, HRSA asked the National Academies of Sciences, Engineering, and Medicine (“NASEM”) to convene an expert committee to review the epidemiological, clinical, and biological evidence about the relationship between COVID-19 vaccines and specific adverse events. In 2024, the NASEM published the Evidence Review of the Adverse Effects of COVID-19 Vaccination and Intramuscular Vaccine Administration.⁷ Even after HRSA commissioned this injury report, HHS has still not established the Injury Table.

21. Without the Injury Table, Ms. Samp’s injuries will never be presumed to be caused by the Moderna COVID-19 vaccines, and she will never be able to receive the compensation to which she should be entitled.

⁶ 42 U.S. Code § 247d-6e(b)(5)(a).

⁷ <https://pubmed.ncbi.nlm.nih.gov/39312602/>

22. For the past five years, Erica Samp has battled debilitating injuries caused by her employer-mandated Moderna COVID-19 vaccines received on May 19, 2021, and June 24, 2021. Almost immediately following her first shot, she noticed she was losing her vision. She had to undergo many tests by multiple hospitals and facilities, was referred to numerous specialists, and underwent numerous MRI's, multiple spinal taps, blood testing, brain scans, and angiograms. She has suffered with swelling in her brain and vascular leaking and swelling. Her deteriorating vision requires that she receive injections in her eyeballs every few weeks, and she also has bilateral hearing loss.

23. Ms. Samp is fighting to keep her vision, hearing, and brain stable. Her brain swelling is the most frightening to her. Constant headaches are difficult for her to manage. She faces the harsh reality that she may become fully blind and deaf.

24. Her medical bills have totaled hundreds of thousands of dollars. She regularly travels to seven medical facilities in two states for medical appointments. The time off work and the travel expenses add up quickly and tremendously. She desperately needs to be compensated.

COUNT ONE
VIOLATION OF ADMINISTRATIVE PROCEDURE ACT
5 U.S. Code §706(1) and 42 U.S. Code § 247d-6e(b)(5)(A)

25. Plaintiff repeats and realleges paragraphs 1 through 24 as if fully set forth herein.

26. 5 U.S.C. § 706(1) is a key provision of the Administrative Procedure Act that grants federal courts the authority to “compel agency action unlawfully withheld or unreasonably delayed.”

27. The HHS Secretary has delayed establishing a COVID-19 Injury Table for over five years. This inaction violates 42 U.S. Code § 247d-6e(b)(5)(A):

The Secretary shall by regulation establish a table identifying covered injuries that shall be presumed to be directly caused by the administration or use of a covered countermeasure and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply. The Secretary may only identify such covered injuries, for purpose of inclusion on the table, where the Secretary determines, based on compelling, reliable, valid, medical and scientific evidence that administration or use of the covered countermeasure directly caused such covered injury.

28. Erica Samp is harmed since no Injury Table has been established. Without the COVID-19 Injury Table, she cannot know if the symptoms of her injuries and/or conditions are considered table injuries with presumed causation. If her serious injuries are included in the Injury Table, it will be presumed that the vaccine caused them unless another cause is proven, and she will benefit. With the HHS Secretary's continued inaction, she remains in limbo.

29. Without the Injury Table, she suffers ongoing harm and can never be "newly eligible" to reapply to CICP.

30. Under the Administrative Procedure Act 5 U.S. Code §706(1), this Court has the power to "compel agency action unlawfully withheld or unreasonably delayed." It is unreasonable that no HHS Secretary has established the required COVID-19 Injury Table since the beginning of the COVID-19 emergency.

COUNT TWO
DECLARATORY JUDGMENT UNDER
28 U.S.C. §§ 2201, 2202; and Fed. R. Civ. P. 57

COMPLAINT FOR DECLARATORY RELIEF


31. Plaintiff repeats and realleges paragraphs 1 through 30 as if fully set forth herein.
32. Plaintiff is entitled to a declaratory judgment under 28 U.S.C. § 2201(a). “To invoke the Declaratory Judgment Act, a plaintiff must demonstrate that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *United Gov’t Sec. Officers of Am., Local 52 v. Chertoff*, 587 F. Supp. 2d 209, 222 (D.D.C. 2008).
33. Absent an Order for the HHS Secretary to establish an Injury Table, Plaintiff will never be able to reapply to HRSA. Her injury is actual, immediate, ongoing, and is caused by Defendant’s continued inaction. Plaintiff has no other remedy at law or in equity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor that provides the following relief:

- i. Declare that the HHS Secretary is violating his duty under the PREP Act since he has not established a COVID-19 Countermeasures Injury Table;
- ii. Issue a Declaratory judgment under 5 U.S.C. § 706(1) ordering the HHS Secretary to perform his non-discretionary duty under U.S. law (42 U.S.C. §247d-6e(b)(5)(a)) to establish a COVID-19 Countermeasures Injury Table;
- ii. Costs and reasonable attorneys’ fees incurred in this action; and
- iv. Such other and further relief as the Court deems just and proper.

Dated: May 19, 2026

Signed 
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