OFFICE OF SPECIAL MASTERS

No. 96-496V

(Filed: November 20, 1997)

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FELIPE CORRALES, by and through his next friend and natural mother, GUADALUPE CORRALES,	*	
Petitioners,	*	
vs.	*	PUBLISH
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	
* *		

James J. Leonard, Jr., Esq., Phoenix, Arizona, for petitioner.

Eleanor A. Barry, Esq., United States Department of Justice, Washington, D.C., for respondent.

DISMISSAL ORDER

Petitioner, Guadalupe Corrales, filed a petition for compensation under the National Childhood Vaccine Injury Act (Vaccine Act or Act)[(1)] on 9 August 1996. Mrs. Corrales alleges that her son, Felipe Corrales, developed necrotizing fasciitis (a flesh eating bacteria) as the result of a Measles, Mumps and Rubella (MMR) vaccination he received on 13 August 1993. Pet. Petition, at 1, 2. Respondent filed a Rule 4(b) report on 7 November 1996, recommending against compensation. In that report, respondent questioned, *inter alia*, whether the petitioner had incurred in excess of $1,000 in unreimbursable expenses as required by § 11(c)(1)(D)(i). The Rule 5 conference was held on 14 February 1997. On 19 June 1997, the court conducted a status conference and the parties were ordered to submit memoranda addressing the issue of whether the babysitting expenses of the petitioner may be used to meet the statutory requirement that petitioner incur in excess of $1,000 in unreimbursable expenses due in whole or in part to the alleged

vaccine-related illness, disability, injury or condition as required by § 11(c)(1)(D)(i). The dispute arises from petitioner's claim that Mr. Corrales' sister, Consuelo Corrales, and Leticia Esparza, a friend, provided babysitting for the Corraleses' other children while Felipe was in hospital and for approximately four weeks after he came back home. Aff. of Miguel Corrales (28 Feb. 1997), at ¶ 4-6. Mr. Corrales avers that, in exchange for these services, he provided groceries for his sister and her children and cash to Mrs. Esparza. *Id.*

On 18 July 1997, respondent filed her brief in opposition to including the babysitting expenses toward the $1,000 unreimbursable expenses requirement. Petitioner filed a brief in response on 7 August 1997 arguing for the inclusion of the babysitting costs toward the $1,000 unreimbursable expenses requirement. This issue, which involves elements of petitioner's *prima facie* case as set forth in § 11(c)(1), must be resolved in petitioner's favor in order for her case to go forward. After considering the entire record and for the reasons discussed *infra*, the undersigned finds petitioner, in this case, has not proven, by a preponderance of the evidence, that it is appropriate to include the petitioner's babysitting expenses when calculating the $1,000 unreimbursable expenses requirement. In addition, petitioner has not incurred in excess of $1,000 unreimbursable expenses as required by § 11(c)(1)(D)(i). *Ergo*, petitioner's case is dismissed.

DISCUSSION

The Act contains certain prerequisites which a petitioner must satisfy in order to establish a *prima facie* case of entitlement to compensation. § 11(c)(1); *Smith v. Secretary of HHS*, No. 91-57V, 1992 WL 210999, at *1 (Cl.Ct.Spec.Mstr. Aug 13, 1992);[(2)] *Olascoaga v. Secretary of HHS*, No. 93-0616V, 1994 WL 100687, at *1 (Fed.Cl.Spec.Mstr. March 14, 1994). Section 13(a)(1)(A) of the governing statute provides that program compensation shall be awarded if the court finds "that the petitioner has demonstrated by a preponderance of the evidence the matters required in the petition by section 300aa-11(c)(1) of this title." Section 11(c) states, in pertinent part, as follows:

A petition for compensation under the Program for a vaccine-related injury or death shall contain--

(1) an affidavit, and supporting documentation, demonstrating that the person who suffered such injury or who died--

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(D)(i) suffered the residual effects or complications of such illness, disability, injury, or condition for more than 6 months after the administration of the vaccine and *incurred unreimbursable expenses due in whole or in part to such illness, disability, injury, or condition in an amount greater than $1,000*.

§ 11(c)(1)(D)(i)(emphasis added).

The plain language of the statute indicates there are four elements to the $1,000 unreimbursable expenses requirement of § 11(c)(1)(D)(i). The expenses must be incurred, unreimbursable, due ... to the illness, and in an amount greater than $1,000. Case law has clarified the meaning of the four statutory requirements and added two more requirements. First, the expenses must be reasonable, and second, the expenses must primarily be for the benefit of the injured child. *Ferguson v. Secretary of the DHHS*, No. 93-376V, 1995 WL 642693, at *3 (Fed.Cl.Spec.Mstr. Oct. 19, 1995).

With the statutory and case law requirements combined, the result is a six-part test summarized in a logical and concise format as follows:

A petitioner must demonstrate, by affidavit and supporting documentation, the expenses are:

(1) due to ("but for") the vaccine-related injury;

(2) incurred;

(3) unreimbursable;

(4) reasonable;

(5) primarily for the benefit of the injured party; and,

(6) in an amount greater than $1,000.

Petitioner has the burden of demonstrating the facts necessary for entitlement to an award by a "preponderance of the evidence." § 13(a)(1)(A). Under that standard, the existence of a fact must by shown to be "more probable than not." *In re Winship*, 397 U.S. 358, 371 (1970)(Harlan, J., concurring). Respondent argues that the babysitting costs of petitioner are not appropriately included in the $1,000 unreimbursable expenses calculation because they do not meet four of the six elements listed above. In particular, the babysitting expenses are not "due to" the vaccine-related injury, were not "incurred" by the petitioner, were not reasonable, and they were not primarily for the benefit of the injured party. Petitioner argues that she meets all of the six elements. The court concludes that the petitioner has failed to prove by a preponderance of the evidence that she "incurred" the babysitting expenses.

I
"DUE ... TO"

In order for an expense to qualify towards the requirements of § 11(c)(1)(D)(i), the expense must be "due ... to" the vaccine related injury. The pertinent part of that statute requires the petitioner to demonstrate, by a preponderance of the evidence, that the vaccine-related expenses are "due in whole or in part to such illness, disability, injury, or condition." § 11 (c)(1)(D)(i). In this case, petitioner and respondent have caviled regarding the true meaning of the element. Historically, this court has ruled that the "due to" element of § 11(c)(1)(D)(i) can be satisfied in one of two ways. The element is satisfied by either meeting the definition of § 15(a)(1)(A) or (B) or by meeting the "but for" test. These bifurcated prongs will be discussed in subsections A & B of this section. For the reasons stated in subsections A, B & C of section I, the undersigned holds that no logical or legal reason has been proffered to deviate from precedent. *Ergo*, the court concludes the babysitting expenses satisfy the "due to" element because they would not have been incurred "but for" the vaccine-related injury.

A
SECTION 15

An expense can satisfy the "due to" element if it satisfies the requirements of § 15(a)(1)(A) or (B). The crux of the reasoning is that § 15(a)(1)(A) and (B) describe the types of expenses which can be awarded to a successful petitioner for his vaccine-related injuries, therefore, § 15(a)(1)(A) and (B) must also describe the kind of past vaccine-related expenses which count toward the $1,000 unreimbursable expenses requirement. This argument has been accepted by this court because the language of § 11(c)(1)

(D)(i) is sufficiently analogous to that in § 15(a)(1)(A) and (B) so as to construe the former in light of the latter. *Mathisen v. Secretary of the DHHS*, No. 92-0703V, 1994 WL 808593, at *1 (Fed.Cl.Spec.Mstr. May 2, 1994); *Jamieson v. Secretary of HHS*, No. 90-1019V, 1992 WL 229390, at *2 (Cl.Ct.Spec.Mstr. Aug. 31, 1992); *Matteo v. Secretary of the DHHS*, No. 90-594V, 1991 WL 128584, at fn.4 (Cl.Ct.Spec.Mstr July 1, 1991); *Olascoaga v. Secretary of HHS*, No. 93-0616V, 1994 WL 100687, at *1 (Fed.Cl.Spec.Mstr. Mar. 14, 1994).

Under § 15(a)(1)(B), petitioners in post-act cases[(3)] may receive reimbursement for:

actual unreimbursable expenses incurred *before* the date of judgment awarding such expenses which--

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(iii) were for diagnosis, medical or other remedial care, rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

§ 15(a)(1)(B)(iii)(emphasis added). The language of § 15(a)(1)(A)(iii)(II) is nearly identical to that of § 15(a)(1)(B)(iii). If an expense falls within one of the categories listed above, then the "due to" element is satisfied. The court holds, in this case, the babysitting expenses do not fall within one of the criteria set forth in § 15(a)(1)(A) or (B).[(4)]

Respondent argues that the court should halt here and rule in favor of respondent. In this case, respondent argues that § 15 should be the *only* description of vaccine-related expenses that meet the requirements of § 11(c)(1)(D)(i). This is not the holdings of the cases listed *supra*. *Per contra*, those cases state that § 15 gives this court a litany of the types of expenses which positively meet the requirements of the "due to" element.[(5)] If an item is not listed in § 15, for example babysitting costs, that does not mean the expenditure automatically fails the "due to" element of § 11(c)(1)(D)(i). Instead, the next step in the process is to apply the "but for" test to see if the expenditure meets the requirements of § 11(c)(1)(D)(i). *Ferguson v. Secretary of the DHHS*, No. 93-376V, 1995 WL 642693, at *2 (Fed.Cl.Spec.Mstr. Oct. 19, 1995); *Long v. Secretary of HHS*, No. 94-310V, 1995 WL 929524, at *2 (Fed.Cl.Spec.Mstr. May 3, 1995).

B
"BUT FOR" TEST

A petitioner can satisfy the "due to" element of § 11(c)(1)(D)(i) by using the "but for" test used in traditional tort litigation. An expense qualifies if it would not have been incurred "but for" the alleged vaccine-related injury. This test has been expressly endorsed in several cases. *Williams v. Secretary of HHS*, No. 90-2239V, 1996 WL 608455, at *1 (Fed.Cl.Spec.Mstr. Oct. 10, 1996); *Ferguson v. Secretary of the DHHS*, No. 93-376V, 1995 WL 642693, at *2 (Fed.Cl.Spec.Mstr. Oct. 19, 1995); *Long v. Secretary of HHS*, No. 94-310V, 1995 WL 929524, at *2 (Fed.Cl.Spec.Mstr. May 3, 1995); *May v. Secretary of HHS*, No. 91-1057V, 1997 WL 402412, at *2 (Fed.Cl.Spec.Mstr. June 27, 1997). In this case, petitioner's babysitting expenses would not have been incurred "but for" Felipe's alleged vaccine-related injury. If Felipe had not been in hospital, his parents would not have needed a babysitter to care for the children remaining at home. Felipe was severely injured by the necrotizing fasciitis and he needed

the nurturing care of both of his parents at hospital. Even after Felipe's return home, Mr. and Mrs. Corrales needed assistance taking care of the other children because caring for Felipe was time consuming. Respondent has no evidence that petitioner used a babysitter for her children prior to Felipe's injuries. "But for" Felipe's alleged vaccine-related injury, petitioner would not have needed a babysitter.

C
MEDICAL EXPENSES

Respondent has also argued that the babysitting expenses don't meet the "due to" element because the babysitting costs are not medical expenses - i.e., payments to physicians, hospitals, and similar health care providers. Respondent wants this court to look at the legislative history of the statute in support of her proposition. The legislative history, however, is at variance with respondent's proposition. While there is one passage in the legislative history where a committee report,[(6)]

in describing the "$1,000 requirement," places the adjective "medical" in front of the word "expenses" in a draft of the statute, Congress did not place the adjective "medical" in front of the word "expenses" in the *final* version. *Ferguson v. Secretary of the DHHS*, No. 93-376V, 1995 WL 642693, at *2 (Fed.Cl.Spec.Mstr. Oct 19, 1995).

Withal, it is the wording of the statute, not the legislative history, that controls. *Williams v. Secretary of HHS*, No. 90-2239V, 1996 WL 608455, at *1 (Fed. Cl. Spec. Mstr. Oct. 10, 1996). In questions of statutory construction, a court must first examine the language of the statute at issue. When a statute is plain and unequivocal on its face, there is no need to resort to legislative history. *Olascoaga v. Secretary of HHS*, No. 93-0616V, 1994 WL 100687, at *1 (Fed.Cl.Spec.Mstr. March 14, 1994); *United States v. Oregan*, 366 U.S. 643, 648 (1961). The plain language of the Act does not limit expenses to "medical expenses" nor does it place other specific limitations on the type of injury-related expenses that qualify. *Ferguson v. Secretary of the DHHS*, No. 93-376V, 1995 WL 642693, at *2 (Fed.Cl.Spec.Mstr. Oct. 19, 1995). Therefore, the most straightforward interpretation of the language of the statute is that any expense, which would not have been incurred "but for" the vaccine-related injury, satisfies the "due to" element of § 11(c)(1)(D)(i).

Respondent's argument has been pursued antecedently and rejected.[(7)] The court has repeatedly held that expenses counted toward the $1,000 requirement need not be "medical" in nature. *Long v. Secretary of HHS*, No. 94-310V, 1995 WL 929524, at *2 (Fed.Cl.Spec.Mstr. May 3, 1995)(expenses for filing workers' compensation claim); *Ferguson v. Secretary of the DHHS*, No. 93-376V, 1995 WL 642693, at *2 (Fed.Cl.Spec.Mstr. Oct. 19, 1995)(expenses of finding a new job); *Hutchings v. Secretary of HHS*, No. 94-388V, 1994 WL 413273, at *1 (Fed.Cl.Spec.Mstr. July 20, 1994)(mileage expenses); *Mathisen v. Secretary of the DHHS*, No. 92-0703V, 1994 WL 808593, at *1 (Fed.Cl.Spec.Mstr. May 2, 1994) (mileage expenses); *Olascoaga v. Secretary of HHS*, No. 93-0616V, 1994 WL 100687, at *1 (Fed.Cl.Spec.Mstr. Mar. 14, 1994)(mileage expenses and parking fees); *Jamieson v. Secretary of HHS*, No. 90-1019V, 1992 WL 229390, at *2 (Cl.Ct.Spec.Mstr. Aug. 31, 1992)(meal expenses incurred by parents in visiting ill child in hospital); *Williams v. Secretary of HHS*, No. 90-2239V, 1996 WL 608455, at *1 (Fed.Cl.Spec.Mstr. Oct. 10, 1996)(mileage expenses). For the reasons stated in subsections A, B & C of section I, this court holds that the babysitting expenses meet the "due to" element of § 11(c)(1)(D)(i) because they would not have been incurred "but for" the vaccine-related injury.

II
INCURRED EXPENSE

In order for an expense to qualify towards the requirements of § 11(c)(1)(D)(i), the expense must be an "incurred" expense. The expense must be incurred within the statute of limitations period for filing the Program petition, which in this case means the thirty-six month period from the onset of Felipe's symptoms. § 16(a)(2); *May v. Secretary of HHS*, No. 91-1057V, 1997 WL 402412, at *1 (Fed.Cl.Spec.Mstr. June 27, 1997); *Black v. Secretary of the DHHS*, 93 F.3d 781, 790 (Fed.Cir.1996). In this case, the meaning of the word "incurred" is in dispute.

Unless otherwise defined, "the words of a statute must be given their usual and ordinary meaning." *State v. Thiele*, 736 P.2d 297, 301 (Wash.Ct.App. 1987). Additionally, in seeking an appropriate construction, it has been noted that "[t]he most fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." *Fierro v. State Board of Control*, 236 Cal.Rptr. 516, 517 (Cal.Ct.App. 1987). Stated differently, "courts, in construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it." *United States v. Union Pacific R.R. Co*., 91 U.S. 72, 79 (1875). Following this admonition, and harmonizing the meaning of the questioned term with all other parts of the statute so that meaning is accorded every word and phrase, will produce a useful and workable definition. *Fierro v. State Board of Control*, 236 Cal.Rptr. 516, 517 (Cal.Ct.App. 1987).

Dictionaries define the word "incur" as "to render oneself liable to [damages]," "to become through one's own actions liable or subject to," "to bring upon oneself," *VII Oxford English Dictionary* 835 (2nd. ed. 1989), or similarly, "to have liabilities cast upon one ... [t]o become liable or subject to, ... as to incur debt." *Black's Law Dictionary* 768 (6th ed. 1990). One incurs an expense, therefore, at the moment one becomes legally liable, not at the moment when one pays off the debt, nor at the moment when one decides that an expense may become necessary one day in future. *Quarles Petroleum Co. v. United States*, 213 Ct.Cl. 15, 22, 551 F.2d 1201, 1205 (1977)("To incur means to become liable for or subject to; it does not mean to actually pay for.").

An incurred expense is an amount of money petitioner is legally obligated to pay. *Warner v. Secretary of HHS*, No. 92-0201V, 1992 WL 405286, at *1 (Fed.Cl.Spec.Mstr. Dec. 29, 1992); *Black v. Secretary of the DHHS*, 33 Fed.Cl. 546, 550 (1995). A gift given in appreciation of a kind act is not an incurred expense because there is not a legal obligation to bestow gifts on charitable persons. Ruefully, this ruling may adversely affect the recipients of *pro bono* amicable services (in the context of § 11(c)(1)(D)(i)), but it is the proper function of the court to apply the law to the facts. Also, petitioner must prove she incurred her expenses by a preponderance of the evidence. § 13(a)(1)(A). For the reasons explained *infra*, the court holds the petitioner did not incur the babysitting expenses.

In this case, petitioner has not proven by a preponderance of the evidence that she incurred the babysitting expenses. In fact, petitioner's affidavits show just the opposite of the desired effect. In Mr. Miguel Corrales' affidavit, dated 28 February 1997, he stated in ¶ 8 he "did not pay Consuelo [his sister] a salary because she would not accept it." *Id.* Instead, Mr. Corrales "provided all groceries for Consuelo and her children and diapers for Christina." *Id.* at ¶ 6. The "grocery bill was approximately $35 per week more than it usually was. These increased grocery costs totaled approximately $230 for the 6 ½ week period." *Id.* at ¶ 7. Mr. Corrales also describes how Leticia Esparza, a friend, cared for Felipe. He said he "gave her an additional $15 on two occasions in *gratitude* for her services to our family." *Id.* at ¶ 5 (emphasis added). The costs of the groceries for Consuelo and the money given to Mrs. Esparza were not incurred expenses because there was no legal obligation to pay for the babysitting expenses. Instead, Mr. Corrales clearly stated his sister would not accept a salary for her services. Also, Mr. Corrales clearly stated he gave his friend some money in gratitude of her services. It must be reasoned that these expenditures were gifts in appreciation for the help the Corraleses received in a time of need. The court recognizes that Mr. Corrales' affidavit, dated 12 June 1997, at ¶ 9 and 10, and Mrs. Corrales' affidavit,

dated 12 June 1997, at ¶ 5 and 6, state that the money to Mrs. Esparza was not a gift and the groceries for Consuelo Corrales were for services rendered, but the court accepts these affidavits *cum grano salis*. They contradict the earlier affidavit of Mr. Corrales and they were filed *after* respondent filed, on 5 May 1997, her brief in opposition of including the babysitting expenses towards the $1,000 unreimbursable expenses requirement. For these reasons, the court must conclude that the babysitting expenses were not incurred as required by § 11(c)(1)(D)(i).

III
UNREIMBURSABLE

In order for an expense to qualify towards the requirements of § 11(c)(1)(D)(i), the expense must be "unreimbursable." Respondent does not argue that the babysitting expenses are reimbursable. After reviewing the file and relevant case law, the court rules the expenses are unreimbursable because the evidence indicates that the petitioner doesn't have a legal right against anyone to be reimbursed for the babysitting expenses.

IV
REASONABLE

In order for an expense to qualify towards the requirements of § 11(c)(1)(D)(i), the expense must be "reasonable." *Ferguson v. Secretary of the DHHS*, No. 93-376V, 1995 WL 642693, at *2 (Fed.Cl.Spec.Mstr. Oct. 19, 1995)(travel expenses were not reasonable when petitioner stayed in a city for too long); *May v. Secretary of HHS*, No. 91-1057V, 1997 WL 402412, at fn.6 (Fed.Cl.Spec.Mstr. June 27, 1997)(explaining that if an injured party needed a knee brace, and one made from aluminum costing $500 would suffice, then expenditure of $1,000 for a brace made of gold instead of aluminum would fail the "reasonableness" test).

Respondent argues the Corraleses did not need a babysitter because one of the spouses could have stayed home with the children while the other was at the hospital with Felipe. Resp. Brief, at 6. Also, respondent agues that once Felipe returned home, there was no longer a need for a babysitter. *Id.* Not without reason, Mr. and Mrs. Corrales believed their child was approaching death. It is more than reasonable for both parents to want to be with a dying child. Additionally, once home Felipe still required a quantum of care and Mr. Corrales had to return to work. The court rules the babysitting expenses were reasonable.

V
PRIMARILY FOR THE BENEFIT OF THE INJURED PARTY

In order for an expense to qualify towards the requirement of § 11(c)(1)(D)(i), the expense must be primarily for the benefit of the injured party. Respondent argues that the babysitting services were for the children remaining at home, and not for Felipe, and therefore the expenses were not primarily for the benefit of the injured child. Resp. Brief, at 5. Respondent fails to recognize that the primary purpose of the babysitting was to allow the parents the opportunity to see Felipe. Felipe received the benefit of having his parents love and nurture him while he was sick in hospital. This benefit is both real and understandable. The court rules the expenses were primarily for the benefit of the injured party (Felipe).

VI

AN AMOUNT GREATER THAN $1,000

In order for the expenses to satisfy the requirements of § 11(c)(1)(D)(i), the aggregate sum of the expenses must be an amount greater than $1,000. If petitioner's unreimbursable expenses do not exceed $1,000, she has not satisfied the *prima facie* requirements of § 11(c) and her case must be dismissed. On 11 April 1997, petitioner filed Petitioner's Supplemental Brief Re: $1,000 Threshold Expenses. In that document, petitioner listed the transportation, babysitting, and hospital food expenses of the petitioner is a concise manner. The sum of the expenses is $1,047.50. This included $100.00 "paid to Leticia Esparza" and $227.50 for the "increase in grocery bill." *Id.* at 2. Since the court rejects the babysitting expenses because they were not "incurred," the $327.50 listed for babysitting expenses are expunged from the total amount. This leaves only $720.00 in unreimbursable expenses. Petitioner has not incurred an amount greater than $1,000 in unreimbursable expenses,[(8)] and therefore, petitioner's case must be dismissed.

CONCLUSION

The Act contains certain prerequisites which a petitioner must satisfy in order to establish a *prima facie* case of entitlement to compensation. § 11(c)(1). Petitioner must prove by a preponderance of the evidence, § 13(a)(1)(A), each of the six elements of the $1,000 unreimbursable expenses requirement of § 11(c)(1)(D)(i). In the case at bar, petitioner has failed to prove her babysitting expenses satisfy the requirement that the expenses were "incurred." Further, petitioner has failed to prove she incurred greater than $1,000 unreimbursable expenses. Consequently, petitioner's case is hereby DISMISSED with prejudice. In the absence of a motion for review filed pursuant to RCFC, Appendix J, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

Richard B. Abell

Special Master

1. The statutory provisions governing the Vaccine Act are found in 42 U.S.C. §§ 300aa-1 to 300aa-34 (1991 & Supp. 1997), as amended by Title II of the Health Information, Health Promotion, and Vaccine Injury Compensation Amendments of 26 November 1991 (105 Stat. 1102). The National Vaccine Injury Compensation Program comprises Part 2 of the Vaccine Act. Reference will be to the relevant subsection of 42 U.S.C. § 300aa.

2. The Federal Courts Administration Act of 1992, Pub.L.No. 102-572, § 902(a), 106 Stat. 4506, 4516 (1992), enacted on October 29, 1992, changed the name of the United States Claims Court to the United States Court of Federal Claims. The United States Court of Federal Claims is the successor to the United States Claims Court in all respects. See General Order No. 33.

3. Post-act cases are those in which the vaccine in question was administered after October 1, 1988.

4. Petitioner cites the case of *Waage v. Secretary of the DHHS*, No. 90-260V, 1991 WL 105487, at *2 (Cl.Ct.Spec.Mstr. May 30, 1991), in which the court awarded the petitioner $320 per year for babysitters while the parents take the child to an out-of-town doctor to support her proposition. Respondent cites the case of *Wasson v. Secretary of the DHHS*, No. 90-208V, 1991 WL 20077, at *6 (Cl.Ct.Spec.Mstr. Jan. 10, 1991), in which the court denied an award of babysitting costs to the petitioner. Because this court holds the babysitting expenses satisfy the "but for" test in this case, this court need not elaborate on its holding that the babysitting expenses do not fall within the criteria set forth in § 15(a)(1)(A) or (B) because it would be *dicta*.

5. The argument advanced by respondent is *réchauffé* and has been resoundly rejected by this court on multiple occasions. It would be apropos for respondent to remove this argument off her standard boilerplate objections to petitioner's expenses.

6. *See* H.R.Rep. No. 100-908, pt.1, at 699 (1987).

7. Again, the argument advanced by respondent is *réchauffé* and has been resoundly rejected by this court on multiple occasions. It would be apposite for respondent to remove this argument off her standard boilerplate objections to petitioner's expenses.

8. Petitioner has also asked the court to include towards the "$1,000 requirement" the costs of meals eaten in hospital by Mr. and Mrs. Corrales while they were visiting Felipe in hospital. This valid request fits squarely in a prior decision by the undersigned. *Jamieson v. Secretary of HHS*, No. 90-1019V, 1992 WL 229390, at *2 (Cl.Ct.Spec.Mstr. Aug. 31, 1992). Nonetheless, the petitioner's total of $1,047.50 unreimbursable expenses listed above already includes the $480.00 for food purchased by Mr. and Mrs. Corrales at hospital from August to September. As explained above, even with the food expenses included, the petitioner still falls short of the $1,000 threshold.