

OFFICE OF SPECIAL MASTERS

(Filed: December 7, 2005)

LAURIE VIDAVER,)	
)	
Petitioner,)	
)	
v.)	No. 99-0499V
)	DO NOT PUBLISH
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

DECISION¹

Petitioner, Laurie Vidaver (Ms. Vidaver), seeks compensation under the National Vaccine Injury Compensation Program (Program).² Ms. Vidaver filed her Program petition on July 26, 1999. She alleged merely that she “experienced an adverse reaction to” a hepatitis B vaccination that she received on April 11, 1991. Petition (Pet.) ¶ 3. She seeks now a decision on the record. *See* Status Report, filed November 28, 2005, Attachment.

Respondent denies that Ms. Vidaver is entitled to Program compensation. *See generally* Respondent’s Report and Motion to Dismiss (Report), filed November 18, 2005. At the outset, respondent contests the special master’s jurisdiction over the petition. Report at 5. Respondent asserts that as of November 18, 2005, Ms. Vidaver had “not provided sufficient evidence to prove that she actually received a hepatitis B vaccination,” even though the petition had been pending for

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire decision” will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

over six years. Report at 5. In the alternative, respondent asserts that Ms. Vidaver “has nonetheless failed to meet her burden of proof to establish entitlement to compensation.” *Id.* at 6.

On December 2, 2005, Ms. Vidaver submitted a number of documents. The documents contain a vaccine administration record. *See* Petitioner’s exhibit (Pet. ex.) 3. The vaccine administration record reflects that Ms. Vidaver received one dose of “Recombivax” on April 11, 1991. Pet. ex. 3 at 1. Recombivax is a hepatitis B vaccine. *See, e.g.*, Pet. ex. 3 at 3-4. Therefore, the special master is satisfied that he possesses jurisdiction to consider the merits of Ms. Vidaver’s petition.

Regardless, Congress prohibited special masters from awarding compensation “based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” § 300aa-13(a). Numerous cases construe § 300aa-13(a). The cases reason uniformly that “special masters are not medical doctors, and, therefore, cannot make medical conclusions or opinions based upon facts alone.” *Raley v. Secretary of HHS*, No. 91-0732V, 1998 WL 681467, at *9 (Fed. Cl. Spec. Mstr. Aug. 31, 1998); *see also Camery v. Secretary of HHS*, 42 Fed. Cl. 381, 389 (1998).

The special master has canvassed completely the record. He determines that Ms. Vidaver’s medical records alone do not reflect an independent basis for him to conclude more likely than not that Ms. Vidaver suffered an injury listed in the Vaccine Injury Table (Table) for hepatitis B vaccine, within the period listed in the Table, following her April 11, 1991 hepatitis B vaccination. *See* 42 C.F.R. § 100.3(a)(VIII); § 300aa-11(c)(1)(A) & (C)(i). And, he determines that Ms. Vidaver’s medical records alone do not reflect an independent basis for him to conclude more likely than not that Ms. Vidaver’s April 11, 1991 hepatitis B vaccine caused actually Ms. Vidaver’s condition. *See* § 300aa-11(c)(1)(A) & (C)(ii)(I). As a consequence, Ms. Vidaver requires necessarily medical expert opinion to establish her claim. However, despite adequate opportunity to adduce medical expert opinion, Ms. Vidaver has not obtained medical expert opinion that supports the petition. Thus, the special master is constrained to conclude that Ms. Vidaver is not entitled to Program compensation.

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing the petition.

s/John F. Edwards
John F. Edwards
Special Master