

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**

No. 08-451V  
Filed: October 5, 2010  
Unpublished

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NIA HALL, parent of	*	
ASHA HALL, a minor,	*	
	*	
Petitioner,	*	Decision on the record; Type 1
	*	Diabetes; Diphtheria-tetanus-
v.	*	acellular pertussis, DTaP; Failure to
	*	prosecute
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

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**DECISION**<sup>1 2</sup>

**GOLKIEWICZ, Special Master.**

The Petition in this matter was filed on June 19, 2008. Petitioner alleged that her daughter developed Type I Diabetes (“T1D”) as a result of a Diphtheria-tetanus-acellular pertussis vaccination (“DTaP”) received on June 21, 2005. A status conference was held on July 25, 2008, wherein the parties agreed that petitioner would complete the medical record and the parties would await a decision in Hennessey v. Sec’y of the Dept. of Health & Human Servs., No. 01-190V. Order, filed August 1, 2008. Hennessey was the lead case in an omnibus proceeding alleging T1D following vaccination. Petitioner filed records and a Statement of Completion regarding completion of the record was filed on September 29, 2008.

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<sup>1</sup> This document constitutes a final “decision” in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision.

<sup>2</sup> The undersigned intends to post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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.

On May 29, 2009, Special Master Denise Vowell issued a decision denying entitlement in Hennessey v. Sec'y of the Dept. of Health & Human Servs., No. 01-190V, 2009 WL 1709053 (Fed. Cl. Spc. Mstr. May 29, 2009). Although no official stay was docketed, proceedings on the Petition *sub judice* waited while the Motion for Review in Hennessey was considered. The Motion for Review in Hennessey was denied on January 7, 2010. Hennessey v. Sec'y of the Dept. of Health & Human Servs., No. 01-190V, 91 Fed. Cl. 126, 2010 WL 94560 (Fed. Cl. 2010).

On February 23, 2010, petitioner was ordered to file a status report detailing how petitioner intends to proceed in this case in light of the decision and denial of the Motion for Review in Hennessey. By June 28, 2010, petitioner had filed three status reports stating that petitioner was unresponsive to counsel's attempts to communicate with petitioner. On July 28, 2010, petitioner's counsel filed a fourth status report, wherein counsel advised the court that petitioner remained unresponsive to counsel's communication efforts. Petitioner's counsel stated:

To date, counsel has been unable to reach the petitioner to discuss how she would like to proceed. In an effort to initiate contact, counsel has sent written correspondence through the U.S. Postal Service. Letters were sent to the petitioner on April 21, 2010 and June 23, 2010. Emails were sent to the client on May 25, 2010; July 8, 2010; and, July 26, 2010. In addition to the written correspondence, telephonic messages were left on petitioner's cell phone on April 26, 2010; April 30, 2010; May 4, 2010; May 11, 2010; May 25, 2010; June 1, 2010; June 22, 2010; July 8, 2010; July 23, 2010; July 26, 2010; and, July 28, 2010. The petitioner has not responded to the multiple attempts to establish communication.

P Status Report, filed July 28, 2010.

In a status conference held on September 1, 2010, petitioner's counsel confirmed no contact had yet been received from petitioner. See Minute Entry, September 1, 2010. The undersigned informed the parties that an Order to Show Cause would issue and petitioner's counsel agreed to forward this Order to petitioner. Order, filed September 1, 2010.

On October 1, 2010, petitioner's counsel filed a status report. P Status Report, October 1, 2010. Petitioner's counsel stated the Order to Show Cause was forwarded to petitioner through the U.S. Postal Service and by email. On October 1, 2010, petitioner's counsel again left a telephonic message on petitioner's cell phone. Petitioner still has not responded to the multiple attempts to establish communication. Id.

Petitioner was warned that failure to follow court orders shall result in dismissal of petitioner's claim. See, e.g., Order, filed September 1, 2010 (citing Tsekouras v. Sec'y of the Dept. of Health & Human Servs., 26 Cl. Ct. 439 (1992), aff'd per curiam, 991 F.2d 810 (Fed. Cir. 1993); Sapharas v. Sec'y of the Dept. of Health & Human Servs., 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b)).

To receive compensation under the Vaccine Act, a petitioner must prove that she suffered a “Table injury” or an injury caused-in-fact by the vaccinations. 42 U.S.C. §§ 300aa-13(a)(1)(A), 300aa-11(c)(1). Review of the record shows it does not contain persuasive evidence that petitioner’s daughter’s T1D was caused by the vaccination. Further, petitioner has not offered a reliable medical opinion to support her case.

Under the Vaccine Act, a special master cannot find a petitioner has proven her case by a preponderance of the evidence based upon “the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” 42 U.S.C. § 300aa-13(a) (2006). In this case, the medical records are insufficient to establish vaccine causation and petitioner has submitted no expert opinion to support her claim. Moreover, petitioner has failed to respond to the court’s orders. Thus, this case is dismissed for insufficient proof and failure to prosecute.

The Clerk shall enter judgment accordingly.

**IT IS SO ORDERED.**

s/ Gary J. Golkiewicz  
Gary J. Golkiewicz  
Special Master