

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-0339V

Filed: April 27, 2011

MIA D. MERRELL, parent of
Anthony D. Merrell, a minor,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

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Petitioner’s Motion for a Decision
Dismissing the Petition; Insufficient Proof
of Causation; Vaccine Act Entitlement;
Denial Without Hearing

DECISION¹

On March 8, 2004, petitioner filed a “Short-Form Autism Petition For Vaccine Compensation” in the National Vaccine Injury Compensation Program (“the Program”).² In effect, by use of the special “Short-Form” developed for use in the context of the Omnibus Autism Proceeding, the petition alleges that various vaccinations injured Anthony. Petitioner has filed voluminous medical records in support of her claim. The information in the record, however, does not show entitlement to an award under the Program.

On April 22, 2011, petitioner filed a “Motion for Dismissal Decision.” Petitioner asserts in the Motion that under the current applicable law, petitioner will be unable to demonstrate

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

²The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa (2006).

entitlement to compensation in the Program. Petitioner's Motion at 2. Accordingly, petitioner requests that the undersigned dismiss the above-captioned petition. Id.

To receive compensation under the Program, petitioner must prove either 1) that Anthony suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Anthony suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Anthony suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Anthony's injury was vaccine-caused.

Under the Act, the petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records are not sufficient to support petitioner's claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Anthony suffered a "Table Injury" or that his injury was "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. In the absence of a timely-filed motion for review of this Decision, the Clerk shall enter judgment accordingly.**³

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

³ The undersigned notes that if a petitioner elects to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law a petitioner will need to first establish proof of vaccination and the timely filing of the Petition for Vaccine Compensation, see § 300aa-16(a)(2) and 16(b), prior to any award for attorneys' fees and costs being granted. See Brice v. Secretary of Health and Human Services, 358 F.3d 865, 869 (2004), citing Martin v. Secretary of Health and Human Services, 62 F.3d 1403, 1406 (1995).