

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

KRISTEN TIMMERMAN,
Legal Representative of a Minor Child,
C.T.,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 09-711V
Special Master Christian J. Moran

Filed: October 14, 2010
Reissued: January 5, 2011

Ruling on the record; varicella
vaccination; failure to establish
causation; denial of compensation

UNPUBLISHED DECISION¹

On October 20, 2009, Ms. Timmerman, on behalf of her daughter C.T. filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). Ms. Timmerman alleged that a Varicella vaccination, which C.T. received on October 9, 2007, caused C.T. to suffer from a “high-spiking fever...abdominal pain, extreme facial and abdominal swelling, massive weight gain, headaches, and hand tremors.” See Petition, filed Oct. 20, 2010, at 1; Resp’t Report, filed May 7, 2010, at 1. The information in the record, however, does not show entitlement to an award under the Program.

To receive compensation under the Program, a petitioner must prove either: 1) she suffered a “Table Injury” - i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of her medical problems were actually caused by the vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the filed medical records, however, did not uncover any evidence that C.T. suffered a “Table Injury.” Furthermore, the records do not contain

¹When this decision was originally issued, the parties were notified that the decision would be posted in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). The parties were also notified that they may seek redaction pursuant to 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b). Petitioner made a timely request for redaction and this decision is being reissued with the name of the minor child redacted to initials.

a medical expert's opinion indicating that any of C.T.'s problems were caused by the Varicella vaccine administered on October 9, 2007.

Under the statute, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either the medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioner's claims, a medical opinion must be offered in support. Petitioner, however, offered no such opinion.

In a motion filed on June 23, 2010, petitioner's counsel requested a ruling on the record as it now stands, and acknowledged that petitioner "cannot find an expert to support causation in her case." The court hereby grants petitioner's motion for a ruling on the record and makes its decision based on the written filings. Vaccine Rule 8(d).

Under the law, compensation may only be awarded when a medical condition either falls within one of the "Table Injury" categories, or is shown by competent medical opinion to be vaccine-caused. No such proof exists in the record. Accordingly, it is clear from the record that C.T. has failed to demonstrate either that she suffered a "Table Injury" or that her condition was "actually caused" by a vaccination.

Therefore, the only alternative that remains is to DENY this petition. In the absence of a motion for review, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master