

To receive compensation under the Program, petitioners must prove either 1) that Nicholas suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Nicholas’ vaccinations, or 2) that Nicholas suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A) and 11(c)(1). Examination of the record does not disclose any evidence that Nicholas suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Nicholas’ alleged injury was vaccine-caused.

Under the Vaccine Act, petitioners may not be awarded compensation based on the petitioners’ claims alone. Rather, the petition must be supported by either the medical records or by a medical opinion. § 13 (a)(1). In this case, the record does not contain medical records or a medical opinion sufficient to demonstrate that the vaccinee, Nicholas Kumapley, was injured by a vaccine. For these reasons, in accordance with § 12(d)(3)(A), the **petitioners’ claim for compensation is denied and this case is dismissed for insufficient proof.**

Petitioners have also filed an unopposed motion for an award of attorneys’ fees and costs in this case. Petitioners are entitled to reasonable attorneys’ fees and costs pursuant to §§ 15(b) and (e)(1). Respondent has reviewed the motion and does not object. Petitioner seeks attorneys’ fees and costs in the amount of \$6,838.18. In lieu of filing a Vaccine General Order 9 statement, petitioners’ counsel noted the out of pocket costs that petitioners personally incurred.

I find that this petition was brought in good faith and upon a reasonable basis. Therefore, an award for fees and costs is appropriate, pursuant to 42 U.S.C. §§ 300aa-15(b) and (e)(1). Further, the proposed amount seems reasonable and appropriate.

Accordingly, I hereby award the total \$6,838.18³ as follows:

- **a lump sum of \$6,496.56 in the form of a check payable jointly to petitioners, Robert and Genevieve Kumapley, and petitioners’ counsel, Gallagher and Gallagher Law Firm LLC, for petitioner’s attorney fees and costs, and**
- **a lump sum of \$341.62 in the form of a check payable to petitioners, Robert and Genevieve Kumapley, for their personal litigation costs.**

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, “advanced costs” as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec’y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/ Denise K. Vowell

Denise K. Vowell

Special Master

⁴ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).