

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 08-800V  
Filed: April 19, 2010**

|                                  |   |                               |
|----------------------------------|---|-------------------------------|
| *****                            |   |                               |
| DAVID PANZIRER, parent of Morgan | * |                               |
| Panzirer, a minor,               | * |                               |
|                                  | * |                               |
| Petitioner,                      | * | Decision on the Record;       |
|                                  | * | Type I Diabetes;              |
| v.                               | * | Varicella; Failure to Produce |
|                                  | * | Expert Opinion                |
|                                  | * |                               |
| SECRETARY OF THE DEPARTMENT      | * |                               |
| OF HEALTH AND HUMAN SERVICES,    | * |                               |
|                                  | * |                               |
| Respondent.                      | * |                               |
|                                  | * |                               |
| *****                            |   |                               |

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

**Vowell**, Special Master:

On November 10, 2008, petitioner filed a petition in the National Vaccine Injury Compensation Program ["the Program"],<sup>2</sup> alleging that a varicella vaccination administered on March 2, 2007 caused Morgan Panzirer ["Morgan"] to suffer Type I insulin dependent diabetes ["T1D"]. Petition at 1. The information in the record, however, does not show entitlement to an award under the Program.

On April 16, 2010, petitioner filed a Motion for a Decision Dismissing [the] Petition. Petitioner asserts in his motion that under the current applicable law he will be

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

unable to demonstrate entitlement to compensation in the Program. Petitioner's Motion at 2. In his motion, petitioner explained that the evidence on which he expected to rely "is the same as that presented by Thomas Hennessey." *Id.* at 2. Petitioner acknowledged that in Mr. Hennessey's case, which served as a test case for evidence of a causative link between the hepatitis B vaccine and T1D, I found that petitioner did not demonstrate that vaccines can cause T1D or significantly aggravate an underlying condition of T1D. See *Hennessey v. Sec'y, HHS*, No. 01-190V, 2009 WL 1709053 (Fed. Cl. Spec. Mstr. May 29, 2009), *aff'd*, 91 Fed. Cl. 126 (2010). Petitioner has therefore requested that I dismiss the above-captioned petition. Petitioner's Motion at 1.

To receive compensation under the Program, petitioner must prove either 1) that Morgan suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that Morgan 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 Morgan suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that her alleged injury was vaccine-caused.

A petitioner may not receive 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 there are insufficient medical records supporting petitioner's claim, a reliable 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 Morgan suffered a "Table Injury" or that her injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

**s/Denise K. Vowell**  
**Denise K. Vowell**  
Special Master