

OFFICE OF SPECIAL MASTERS

No. 01-659V

Filed: September 12, 2006

Not to be published

GEORGE CHOU, father, and XIUJUAN WANG,
mother, each as legal guardians to Yuening Chou, a
minor,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

Denial Without Hearing

DECISION¹

This is an action in which the petitioners seek an award under the National Vaccine Injury Compensation Program (hereinafter “the Program--see 42 U.S.C. § 300aa-10 *et seq.*). I find that petitioners are not entitled to an award.

I

BACKGROUND

On November 21, 2001, the petitioners filed their petition, alleging that their daughter, Yuening Chou, suffered a neurological disorder as a result of two DTaP vaccinations administered on September 25 and November 20, 1998.

After the respondent filed a motion to dismiss, arguing that the claim was time-barred, on July 15, 2002, I issued a ruling concerning that motion, in which I held that the petition was not time-barred insofar as it alleged an injury caused by the vaccination of November 20, 1998. In

¹This document constitutes my 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 this Court shall enter judgment in accord with this decision.

Also, the petitioners are reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4), Rule 18(b)(2) of the Vaccine Rules of this Court, and the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), this decision will be made available to the public unless petitioners file, within fourteen days, an objection to the disclosure of any material in this decision that would constitute “medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.”

that ruling, I stated that in order to prove their case as to the timely claim, petitioners would have to submit additional evidence on the issue of causation. I stated that I would allow the petitioners time to secure new counsel.

On October 31, 2005, attorney Neal Fialkow entered an appearance for the petitioners. Counsel for petitioners attempted to secure an expert witness to support the petitioners' timely claim. However, on July 27, 2006, without submitting any additional records or expert reports, counsel filed a motion asking that I rule upon the record as it now stands. Respondent, on August 3, 2006, filed a renewed motion to dismiss on timeliness grounds. After discussion at unrecorded status conferences on August 23 and September 8, 2006, the parties agreed that I should rule on their outstanding motions without further filings by either side. Therefore, I will now rule.

II

DISCUSSION

To receive compensation under the Program, the petitioners would need to prove, among other things, a causal relationship between Yuening's condition and a vaccination. That is, they would need to prove either: 1) that Yuening 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 Yuening's disorder was "caused-in-fact" by a vaccination or vaccinations. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1).

My examination of the medical records and other documents filed in this case, however, did not uncover evidence demonstrating that Yuening suffered a "Table Injury." Further, the filed records do not contain persuasive evidence that Yuening's neurologic disorder was caused, or aggravated, by a vaccination.

In short, I conclude that the information in the record does not show entitlement to an award under the program.

III

CONCLUSION

I am, of course, sympathetic to the fact that Yuening suffers from an unfortunate medical condition. However, under the law I can authorize compensation only when a medical condition either falls within one of the "Table Injury" categories, or is shown to be vaccine-caused. No persuasive proof on either point exists in the record before me. Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Yuening suffered a "Table Injury" or that her condition was "caused-in-fact" by a vaccination. Therefore, I have no choice but to hereby DENY this claim. In the absence of a timely-filed motion for review of this decision

(see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accord with this decision.²

George L. Hastings, Jr.
Special Master

²In respondent’s motion, filed on August 3, 2006, respondent seems to argue that instead of addressing whether the petitioners have made a successful case concerning the “causation” issue, I should instead dismiss this petition for a *different reason* – *i.e.*, because the petition was allegedly untimely filed with respect to all of the allegations therein. I decline to follow respondent’s suggestion that I address once again the question of timely-filing in this decision. I have concluded that petitioners are *not entitled to an award*, for the reason that they have failed to establish the element of “causation.” It may or may not be true that there are *other* good reasons to deny the petitioners’ claim, but it is unnecessary for me to address any such points. When the petitioners are unable to establish entitlement to an award for *one* reason, it is simply unnecessary to address any other issues, and I decline to do so.