

OFFICE OF SPECIAL MASTERS

No. 02-398V

Filed: June 14, 2005

Liana Joele Kinner, a minor, by her parents and
natural guardians, MICHAEL KINNER and
LAURA KINNER,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

Not to be published.
To be posted on court website.

DECISION¹

On April 24, 2002, the petitioners filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). The petition alleges that petitioners’ daughter, Liana Joele Kinner, experienced seizures and “loss of speech” as a result of one or more of several vaccinations administered on October 12, 1999. The information on the record, however, does not show entitlement to an award under the Program.²

To receive compensation under the Program, that petitioners must prove either: 1) that Liana 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 Liana’s medical problems

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.”

²The statutory provisions governing the National Vaccine Injury Compensation Program are found in 42 U.S.C. § 300-10 et seq. (2000 ed.).

were actually caused by a vaccine. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). My examination of the filed medical records, however, did not uncover any evidence that Liana suffered a “Table Injury.” Further, the records do not contain a medical expert’s opinion indicating that any of Liana’s problems were vaccine-caused.

Under the statute, a petitioner may not be given a Program award based solely on 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 petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

In a motion filed May 18, 2005, petitioners’ counsel, stated that “* * * the medical record is complete and no further reports are available * * *.” Counsel asked that I rule upon the record as it now stands. I will now do so.

I am, of course, sympathetic to the fact that Liana suffers from an unfortunate medical condition. However, under the law I can only authorize compensation 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 before me. Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Liana suffered a “Table Injury” or that her condition was “actually caused” 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.

/s/George L. Hastings, Jr.

George L. Hastings, Jr.
Special Master