

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-685V

Filed: June 18, 2008

not to be published

ROBERT AVILA and HEATHER AVILA,  
legal representatives of a minor child, Taylor  
Avila,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

Vaccine Act Entitlement  
Denial Without Hearing

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

On June 22, 2005, the petitioners filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”).<sup>2</sup> The petition alleges that a DTaP vaccination caused their son Taylor’s “seizure syndrome.” The information in the record, however, does not show entitlement to an award under the Program.

To receive compensation under the Program, petitioners must prove either: 1) that Taylor 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 Taylor’s problems were actually caused by a vaccine. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). My examination

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<sup>1</sup>This 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.”

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

of the filed medical records, however, did not uncover any evidence that Taylor suffered a “Table Injury.” Further, the records do not contain a medical expert’s opinion indicating that any of Taylor’s problems were vaccine-caused.

Under the statute, petitioners may not be given a Program award based solely on their 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, offered no such opinion.

In a “status report” filed on June 16, 2008, counsel for petitioners asked that I rule upon the record as it now stands without further evidentiary hearings.<sup>3</sup>

I am, of course, sympathetic to the fact that Taylor 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 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 the petitioners failed to demonstrate either that Taylor suffered a “Table Injury” or that his 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.

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George L. Hastings, Jr.  
Special Master

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<sup>3</sup>Initially, on January 28, 2008, the attorneys for both parties informed my office that they had reached a tentative settlement. However, for the reasons explained in the status report filed on June 18, 2008, and explained by petitioners’ counsel during a telephonic status conference on June 12, 2008, the petitioners have decided not to agree to a stipulated amount of damages, and instead desire that I rule on their claim as it stands, even though they are aware that, given the lack of evidentiary support for their claim, my ruling must go against them.