In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 04-220V
Filed: August 1, 2011

MATTIE and GILBERT HATTIER, parents of FIONN HATTIER, a minor, **Petitioners,** **v.** **SECRETARY OF HEALTH AND HUMAN SERVICES** **Respondent.**	UNPUBLISHED DECISION Dismissal; Insufficient Proof of Causation; Attorneys' Fees and Costs

DECISION DISMISSING PETITION AND AWARDING ATTORNEYS' FEES AND COSTS [1]

On February 17, 2004, petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program"),[2] alleging that Fionn was injured by a vaccine or vaccines listed on the

[1] Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

[2] The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

Vaccine Injury Table. See § 14. The information in the record does not show entitlement to an award under the Program.

On August 1, 2011, the petitioners moved for a decision on the merits of the petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

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

Under the Vaccine Act, a petitioner may not be awarded compensation based on the petitioner's 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 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.**

The 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. Petitioners seek attorneys' fees and costs in the amount of $7,075.00. In lieu of filing a Vaccine General Order 9 statement from petitioners, the firm avers that petitioners "represent[] that there are currently no expenses incurred by petitioners through this litigation." Ps' Fee App. at 4.

The request for attorneys' fees and costs is granted. Petitioners are awarded reasonable attorneys' fees and costs pursuant to §§ 15(b) and (e)(1), as I find that the petition was brought in good faith and upon a reasonable basis, and the amounts requested are reasonable and appropriate.

Pursuant to §15(e), I award a lump sum of $7,075.00[3] to be paid in the form of a check payable jointly to the petitioners and petitioners' counsel,

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[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, § 15(e)(3)

Lawrence R. Cohan. This amount is to be promptly forwarded to the Anapol, Schwartz, et al.

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/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

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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 of Dep't Health and Human Services, 924 F.2d 1029 (Fed. Cir.1991).

[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).