In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 03-1690V
Filed: April 1, 2011

JON F. MOLVIE and MARGARET S. MOLVIE, Natural Parents of GEORGE THOMAS MOLVIE, a Minor, **Petitioners,** **v.** **SECRETARY OF HEALTH AND HUMAN SERVICES** **Respondent.**	UNPUBLISHED DECISION Petitioners' Motion for a Decision Dismissing their Petition; Insufficient Proof of Causation; Vaccine Act Entitlement; Denial Without a Hearing

DECISION[1]

On July 14, 2003, petitioners filed a Short-Form Autism Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program").[2] In effect, by use of the special "Short-Form" developed for use in the context of the Omnibus Autism Proceeding, the petition alleges that various vaccinations injured George. The information in the record, however, does not show entitlement to an award under the Program.

[1]Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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), petitioner has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 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.

On March 29, 2011, petitioners filed a Motion for a Decision dismissing their Petition. Petitioners assert in the Motion that under the current applicable law they will be unable to demonstrate entitlement to compensation in the Program. Petitioners' Motion at 1. Accordingly, petitioners request that the undersigned dismiss the above-captioned petition. Id.

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

Under the Act, petitioners may not be given a Program award based solely on the petitioners' claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). Because the offered medical records cannot alone support petitioners' claim, a medical opinion must also be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that George suffered a "Table Injury" or that George's injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.** [3]

IT IS SO ORDERED.

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

[3] The undersigned notes that if petitioners elect to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law petitioners will need to first establish proof of vaccination and the timely filing of their Petition for Vaccine Compensation, see § 300aa-16(a)(2) and 16(b), prior to any award for attorneys' fees and costs being granted. See Brice v. Secretary of Health and Human Services, 358 F.3d 865, 869 (2004), citing Martin v. Secretary of Health and Human Services, 62 F.3d 1403, 1406 (1995).