

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-0403V

Filed: April 6, 2011

Not to be Published

Reissued for Redaction: October 21, 2011

CHRISTINA CALABRO and *
PAUL CALABRO, parents of *
SC, a minor, *

Petitioners, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent, *

Petitioner’s Motion for a Decision
Dismissing the Petition; Insufficient Proof
of Causation; Vaccine Act Entitlement;
Denial Without Hearing

DECISION¹

On June 02, 2008, petitioners filed a Petition For Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”).² The petition alleges that various vaccinations injured SC. The information in the record, however, does not show entitlement to an award under the Program.

On March 24, 2011, petitioners filed a Motion for a Decision dismissing their Petition. Petitioners assert in their 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.

¹ When this decision was originally issued, the parties were notified that the decision would be posted in accordance with the E-Government Act of 2002, Pub.L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). The parties were also notified that they may seek redaction pursuant to 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b). Petitioners made a timely request for redaction and this decision is being reissued with the name of the minor child redacted to initials. Except for this footnote, no other substantive changes have been made.

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.

To receive compensation under the Program, petitioners must prove either 1) that SC suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of SC’s vaccinations, or 2) that SC 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 did not uncover any evidence that SC suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that SC’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). In this case, because there are insufficient medical records supporting petitioners’ claim, a medical opinion must 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 SC suffered a “Table Injury” or that her 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/Gary J. Golkiewicz
Gary J. Golkiewicz
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 petitioner 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).