In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 08-0372V
Filed: April 1, 2011
Not to be Published

AUDRA HYATT, parent of JOSHUA ROBERT HYATT, a minor, Petitioner, 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

DECISION [1]

On May 22, 2008, 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 Joshua. The information in the record, however, does not show entitlement to an award under the Program.

On March 17, 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.

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[1] Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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.

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

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).