

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-0433V

Filed: April 15, 2008

Not To Be Published

ANNETTE RZEWUSKI, Parent of
ADRIAN RZEWUSKI, a Minor

Petitioner(s),

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

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

DECISION¹

On June 27, 2007 petitioner filed a Short-Form Autism Petition For Vaccine Compensation ("the Program").² The petition alleges that various vaccinations injured her son, Adrian. The information in the record, however, does not show entitlement to an award under the Program.

On April 7, 2008, petitioner filed a Motion for a Decision Dismissing their Petition. Petitioner asserts "[a]n investigation of the facts and science supporting this case has demonstrated to Petitioners they will be unable to prove Adrian is entitled to compensation in the

¹Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

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

Vaccine Program.” Petitioner’s Motion for a Decision Dismissing their Petition at 1. Accordingly, petitioners request the undersigned dismiss the above-captioned petition. Id.

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter “the Program”), petitioner must prove either 1) that Adrian suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that Adrian suffered an injury that was actually caused by a vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1)³. The undersigned’s examination of the record, did not uncover any evidence that Adrian suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Adrian’s autism was vaccine-caused.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner’s 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 no medical records support petitioner’s claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Adrian suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, the court must dismiss this case for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master

³The 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.* (West 1991 & Supp. 2002) (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C.A. § 300aa of the Act.