In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 05-0689V
Filed: February 1, 2013
Not to be Published

JOHN ELLIS and KRISTIN CIHAK, Parents of JACKSON ELLIS, a minor, Petitioners, v. SECRETARY OF HEALTH AND HUMAN SERVICES Respondent.	Autism; Dismissal; Insufficient Proof of Causation; Attorneys' Fees and Costs

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

On June 23, 2005, petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program"),[2] alleging that Jackson was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14. The information in the record 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[1] Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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), 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.

On February 1, 2013, 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, petitioners must prove either 1) that Jackson suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Jackson's vaccinations, or 2) that Jackson 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 Jackson suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Jackson'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 $3,830.00. In lieu of filing a Vaccine General Order 9 statement, pursuant to the stipulation the firm agrees to reimburse petitioners any costs that petitioners personally incurred that are compensable under § 15 (e)(1).

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 $3,830.00[3] to be paid in the form of a check payable jointly to the petitioners and petitioners' counsel, Conway, Homer & Chin-Caplan, P.C.

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]

---

[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) 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).

IT IS SO ORDERED.

s/George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

[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).