

numerous vaccinations administered between April 9 of 1998 and September 7, 1999” injured David.

Petitioners filed medical records in support of their claim on May 22, 2008. (Exs. 1-5.) After reviewing the medical records, on July 3, 2008, respondent filed a “Statement Regarding Whether This Claim Should Proceed” within the OAP. In that document, respondent stated that there was not enough information in the record to identify the time of onset of David’s condition, or to determine whether the petition had been timely filed.

On March 1, 2011, I issued an Order requiring petitioners to indicate whether they wished to proceed with this claim. In response to that Order, petitioners’ counsel filed a “Motion for a Decision on the Record,” on June 10, 2011.

On June 15, 2011, I issued an Order requiring petitioners to identify the evidence in the record on which they rely to support their claim for compensation, as well as any specific statements, diagnoses, and conclusions made by medical professionals that support their claim. The Order provided that petitioners were to file this information no later than July 15, 2011.

On July 18, 2011, petitioners’ counsel filed a Response to the Order, asserting that the office had been attempting to contact the petitioners for instructions and information, but had not been able to find the family for over four years. (Pet’rs’ Resp. to Order to Show Cause, ECF No. 23.) Petitioners’ counsel asserted that “we must ask for a decision on the record as it stands. . . .” (*Id.*)

On January 30, 2012, petitioners’ counsel filed a “Motion for a Decision on the Record.” Accordingly, I will now rule based upon the existing record.

B. Discussion of Ruling

To receive compensation under the Program, the petitioners must prove either: 1) that David suffered a “Table Injury”--*i.e.*, an injury falling within the Vaccine Injury Table--corresponding to one of his vaccinations, or 2) that David 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). In my examination of the filed medical records, however, I did not find in the record any evidence that David suffered a “Table Injury.” Further, the records do not contain a medical expert’s opinion or any other evidence indicating that David’s condition was vaccine-caused.

David is an unfortunate youth who has suffered from many medical problems. He was born on February 9, 1998. (Ex. 4 at 55.) Dr. Jung L. Rhee, M.D., provided care for David from February 9, 1998 to April 3, 2000. (Pet. Ex. 2.) Dr. Rhee did not note any developmental anomalies during that time period. (Pet. Ex. 2 at 23.) Dr. Richard Sirop began providing pediatric care for David on June 9, 2000. (Ex. 5 at 103.) Dr. Sirop recorded the first indication that David might have a developmental problem on August 25, 2000, when he was close to 3 years old and “still without words.” (Ex. 5 at 104.) Two weeks later, on September 6, Dr. Sirop noted “speech delay.” (*Id.*) Then, on September 27, David was noted to have “developmental

delay” and multiple hyperactive developmental issues. (Ex. 5 at 105.) Dr. Sirop indicated a diagnosis of Autism Spectrum Disorder on September 12, 2001. (Ex. 5 at 107.)

Under the statute, 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. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

I do note that one physician, Dr. Sirop, indicated a diagnosis of Autism Spectrum Disorder on September 12, 2001. (Ex. 5 at 107.) But Dr. Sirop did not express an opinion that there was any type of *causal connection* between this disorder and any vaccinations. No physician expressed such an opinion in the records that I reviewed, and the petitioners have not pointed to any place in the records where any physician stated such an opinion.

In a motion filed January 30, 2012, petitioners’ counsel requested that I rule upon the record as it now stands. Accordingly, I now do so.

I am, of course, sympathetic to the fact that David suffers from very unfortunate medical conditions. However, under the law I can authorize compensation only if a medical condition or injury either falls within one of the “Table Injury” categories, or is shown by medical records or competent medical opinion to be vaccine-caused. No such proof exists in the record before me. Accordingly, it is clear from the record in this case that petitioners have not demonstrated either that David suffered a “Table Injury” or that his condition was “actually caused” by a vaccination. Therefore, I have no choice but to hereby DENY this claim. In the absence of a timely-filed motion for review of this decision (see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accord with this decision.

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