

Not to be Published

Autism;
Dismissal; Insufficient Proof of
Causation; Attorneys' Fees and Costs

On September 1, 2011, the petitioner 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, petitioner must prove either 1) that Bradley suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Bradley’s vaccinations, or 2) that Bradley 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 Bradley suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Bradley’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 **petitioner’s claim for compensation is denied and this case is dismissed for insufficient proof.**

The petitioner has also filed an unopposed motion for an award of attorneys’ fees and costs in this case. Petitioner is entitled to reasonable attorneys’ fees and costs pursuant to §§ 15(b) and (e)(1). Respondent has reviewed the motion and does not object. Petitioner seeks attorneys’ fees and costs in the amount of \$5,505.36. In lieu of filing a Vaccine General Order 9 statement, counsel indicates in the motion that he agrees to reimburse petitioner any costs that petitioner personally incurred that are compensable under § 15(e)(1).

The request for attorneys’ fees and costs is granted. Petitioner is 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 \$5,505.36³ to be paid in the form of a check payable jointly to the petitioner and petitioner’s counsel, James A. Goldstein.

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).

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

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).