

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 03-1151V

Filed: October 3, 2011

Not to be published

MATTHEW KING and
ALICE KING, as parents
and natural guardians of
Matthew X. King, a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

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

DECISION¹

On May 6, 2003, petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),² alleging that Matthew was injured by a vaccine or vaccines listed in the Vaccine Injury Table. *See* § 14. The information in the record, however, does not show entitlement to an award under the Program.

On September 12, 2011, petitioners moved for a decision dismissing the petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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

²The 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 Matthew suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Matthew suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A) and 11(c)(1). An examination of the record did not uncover any evidence that Matthew suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Matthew’s injury was vaccine-caused.

Under the Act, the 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. § 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 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 \$6,415.62.

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 reasonable basis, and the amounts requested are reasonable and appropriate.

Pursuant to § 15(e), I award a lump sum of \$6,415.62,³ to be paid in the form of a check payable jointly to the petitioners and petitioners’ counsel, John Hamilton.

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.

George L. Hastings, Jr.
Special Master

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) .

⁴ Entry of judgment can be expedited by each party’s filing of notice renouncing the right to seek review. *See* Vaccine Rule 11(a).