

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-0283V

Filed: July 20, 2010

DAVID EMMINGER and
CYNTHIA EMMINGER, parents of
David Thomas Emminger, a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

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

DECISION

On March 2, 2004, petitioners filed a "Short-Form Autism Petition For Vaccine Compensation" in the National Vaccine Injury Compensation Program ("the Program").¹ In effect, by use of the special "Short-Form" developed for use in the context of the Omnibus Autism Proceeding, the petition alleges that various vaccinations injured David Thomas Emminger. The information in the record, however, does not show entitlement to an award under the Program.

On July 15, 2010, petitioners filed a "Motion for a Decision Dismissing Their Petition." Petitioners assert in the Motion that under the current applicable law, petitioners will be unable to demonstrate entitlement to compensation in the Program. Petitioners' Motion at 1. Accordingly, petitioners request that the undersigned dismiss the above-captioned petition. Id.

To receive compensation under the Program, petitioners must prove either 1) that David Thomas Emminger suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that David Thomas Emminger suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An

¹The 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.

examination of the record did not uncover any evidence that David Thomas Emminger suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that David Thomas Emminger’s alleged 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. § 300aa-13(a)(1). In this case, because the medical records are not sufficient to support petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that David Thomas Emminger suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. In the absence of a timely-filed motion for review of this Decision, the Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.

George L. Hastings, Jr.
Special Master