



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

Michael is an unfortunate youth who has suffered from many medical problems. He was born on December 6, 1997. (Ex. G, p. 3.) On February 12, 2000, Michael was diagnosed with developmental delay and static encephalopathy of “unknown etiology.” (Ex. H, p. 4.) On July 28, 2000, he received a diagnosis of autism. (Ex. M, p. 3.) Since then, certain specialists have questioned whether “autism” is an accurate description of Michael’s condition. (*E.g.*, Ex. V, p. 12; Ex. JJ, p. 2; Ex. RR, p. 3.) But whether or not Michael is considered as suffering a disorder within the autism spectrum, clearly he has suffered from ongoing severe speech deficits, and social and mobility problems.

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. David Berger, said that he was “suspicious” that Michael’s condition might be connected to his vaccinations. (Ex. S, p. 9.) But even Dr. Berger did not express an affirmative opinion that there was some type of causal connection. 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 September 24, 2010, petitioners requested that I rule upon the record as it now stands. Accordingly, I will now rule upon the record.

I am, of course, sympathetic to the fact that Michael suffers from a very unfortunate medical condition. 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 Michael 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.

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George L. Hastings, Jr.  
Special Master