

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-062V

Filed: January 13, 2011

JOHN A. and DONNA M. GUERRA,)	
as legal representatives of a minor child,)	NOT TO BE PUBLISHED
M.G.,)	
)	
Petitioners,)	
)	
v.)	Motion for Dismissal Decision;
)	polio, MMR, hepatitis B, varicella
)	DTP/DTaP, Hib, PCV vaccines;
SECRETARY OF)	encephalopathy; autism seizure
HEALTH AND HUMAN SERVICES,)	disorder.
)	
Respondent.)	
)	

Anne C. Toale, Maglio Christopher & Toale, P.A., Sarasota, Florida, for Petitioners;
Melonie J. McCall, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Chief Special Master.

On February 3, 2009, John and Donna Guerra ("Petitioners") filed a petition pursuant to the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §300aa-10 to 34 (the "Vaccine Act"). Petitioners alleged that the polio(IPV/OPV), measles-mumps-rubella (MMR), hepatitis B (hep B)and varicella vaccines, which their minor son, M.G., received on February 15, 2006, and the diphtheria-tetanus-pertussis (DTP/DTaP), haemophilus influenza type b (Hib), and pneumococcal conjugate vaccines (PCV) that he received on April 21, 2006, caused him to suffer an encephalopathy, autism, and a seizure disorder. Petition at 3, ¶15. Petitioners also alleged that M.G. suffers from developmental delays that are sequela of the above-listed conditions.

On January 7, 2011, Petitioners filed a motion for a decision dismissing their petition. Petitioners assert in their motion that under the current applicable law, they will be unable to demonstrate entitlement to compensation. Pet'r Motion at 1. Accordingly, Petitioners request that the undersigned dismiss the above-captioned petition. Id.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction "of any information furnished by that party (1) that is trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of a timely objection, the entire document will be made publicly available.

To receive compensation under the Vaccine Act, Petitioners must prove either 1) that M.G. suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that M.G. suffered an injury that was actually caused by a vaccine. See §§300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that M.G. suffered a “Table Injury.” Furthermore, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that M.G.’s injury was caused by a vaccination.

Under the Vaccine Act, a petitioner may not be awarded compensation 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. §300aa-13(a)(1). In this case, because there are no medical records supporting Petitioners’ claims, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

Therefore, the only alternative remains to DENY this petition. **Thus, this case is dismissed for insufficient proof. In the absence of a motion for review, the Clerk is directed to enter judgment accordingly.**

IT IS SO ORDERED.

s/ Dee Lord
Dee Lord
Chief Special Master