

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-10V

Filed: October 3, 2011

_____)	
DYLAN HAYNES, deceased, by his)	
Mother and Personal Representative)	
KAREN PASEKA,)	
)	NOT TO BE PUBLISHED
Petitioner,)	
)	
v.)	Thimerosal; Petitioner's Motion for a
)	Decision; Dismissing the Petition for
)	Insufficient Proof of Causation; Vaccine
SECRETARY OF)	Act Entitlement; Denial Without Hearing
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, M.A., for Petitioner.
Ryan D. Pyles, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

On October 25, 2007, Karen Paseka ("Petitioner"), as mother and personal representative of Dylan Haynes, deceased, filed a Petition For Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program"), alleging that thimerosal-containing vaccines injured Dylan.²

This case became part of a group of cases in which all petitioners alleged that thimerosal in pediatric vaccines caused, contributed to, or triggered the death of a vaccinee. On November 23, 2010, Special Master Abell issued a decision denying entitlement in Kolakowski v. Secretary of Department of Health & Human Services, No. 99-625V, 2010 WL 5672753 (Fed. Cl. Spec. Mstr. Nov. 23, 2010), the test case in the omnibus proceeding. Special Master Abell found that the petitioners failed to prove that

¹ In accordance with Vaccine Rule 18(b), petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Redactions ordered by the special master, if any, will appear in the decision as posted on the United States Court of Federal Claims' website.

² The 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.

thimerosal-containing vaccines can cause death in infant vaccinees and that they failed to prove thimerosal-containing vaccines caused Thomas Kolakowski's death. The decision was not appealed.

On September 27, 2011, the Petitioner was ordered to show cause why her claim should not be dismissed in light of Kolakowski. On September 30, 2011, Petitioner moved for a decision dismissing her petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

To receive compensation under the Program, Petitioner must prove either 1) that Dylan suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Dylan 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 Dylan suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that his alleged injury was vaccine-caused.

Under the Act, 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. § 300aa-13(a)(1). In this case, because there are insufficient medical records supporting Petitioner's claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that Petitioner has failed to demonstrate either that Dylan suffered a "Table Injury" or that his injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

s/Dee Lord
Dee Lord
Special Master