

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-198V

June 23, 2011

Not to be Published

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YALITZA VALLE, parent of \*  
LUCIANO JIMENEZ, a minor, \*

Petitioner, \*

v. \* Motion for decision of

dismissal; no expert report

SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

Ronald C. Homer, Boston, MA, for petitioner.

Traci R. Patton, Washington, DC, for respondent.

**MILLMAN, Special Master**

## DECISION<sup>1</sup>

On April 7, 2010, petitioner filed a petition and, on October 20, 2010, an amended petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. Petitioner has 14 days within which to move to redact a decision on one of these bases.

§300aa-10 et seq., alleging that her son Luciano Jimenez (hereinafter, “Luciano”) had varicella (chickenpox) and immunological injuries from receiving varicella vaccine.

After four extensions of time within which to file an expert report in support of petitioner’s allegations, petitioner filed a motion for a decision dismissing the case on June 23, 2011, stating she would not pursue further proceedings in the case.

This is a causation in fact case. Without an expert to opine in petitioner’s favor, petitioner has failed to make a prima facie case. The undersigned hereby orders the petition dismissed.

### **DISCUSSION**

To satisfy her burden of proving causation in fact, petitioner must prove by preponderant evidence "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury.” Althen v. Sec’y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec’y of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by “proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[.]” the logical sequence being supported by “reputable medical or scientific explanation[.]” *i.e.*, “evidence in the form of scientific studies or expert medical testimony[.]”

Although Luciano had a rash after receiving varicella vaccine, he was never diagnosed with immune deficiencies (med. recs. at Ex. 1, pp. 91, 92), he had a lifelong history of pruritic rash (med. recs. at Ex. 4, p. 15), and his rash after varicella vaccine, according to his allergist, was not consistent with chickenpox (med. recs. at Ex. 6, p. 8).

Petitioner has not filed any proof that would satisfy the three prongs of Althen. Section 300a-13(a) of the Vaccine Act states that a special master may not rule in favor of petitioner “based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” Petitioner has not filed an expert medical opinion in support of her allegations and the medical records do not substantiate her allegations. She has not made a prima facie case of causation in fact. The undersigned grants petitioner’s motion and dismisses this case.

### CONCLUSION

Petitioner’s petition is dismissed. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

June 23, 2011  
DATE

s/Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party’s filing a notice renouncing the right to seek review.