

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

PAMELA BALLARD, As Parent *
And Natural Guardian of *
KMB, *
*
Petitioner, *

No. 10-296V
Special Master Christian J. Moran

v. *

Filed: August 31, 2011
Reissued: September 1, 2011

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *

Petitioner’s motion for a decision
dismissing her petition; insufficient
proof of causation; Vaccine Act
entitlement; Gardasil; HPV.

Anne C. Toale, Maglio, Christopher and Toale, Sarasota, FL, for petitioner;
Voris E. Johson, United States Dep’t of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Pamela Ballard, as parent and natural guardian of her daughter, KMB, filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., on May 17, 2010. Her petition alleged that KMB had an adverse reaction, including seizures and severe headaches, resulting from the receipt of the Gardasil vaccine administered to her on June 19, 2008. The information in the record, however, does not show entitlement to an award under the Program.

I. Procedural History

On September 8, 2010, petitioner filed her medical record, as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A). On this date, petitioner also filed a statement of completion.

Respondent filed her responsive report on December 10, 2010. Respondent recommended a decision denying compensation because she contends that neither the medical records nor the petition establish a Table injury, and because petitioner has not submitted a

¹ When this decision was originally issued, the parties were notified that the decision would be posted in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). The parties were also notified that they may seek redaction pursuant to 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b). Petitioner made a timely request for redaction and this decision is being reissued with the name of the minor child redacted to initials.

medical expert report sufficient to show causation between KMB's injuries and the vaccine. See Resp't Rep't at 16-17.

On August 29, 2011, petitioner filed a motion for a decision dismissing her petition. In support of her motion, petitioner stated that an investigation of the facts and science supporting her case has demonstrated to petitioner that she will be unable to prove that KMB is entitled to compensation in the Vaccine Program. Further, petitioner stated that to proceed with her case would be unreasonable and would waste the resources of the court, respondent, and the Vaccine Program. Petitioner stated that she understands that a decision dismissing her petition will result in a judgment against her. Accordingly, petitioner requests that the undersigned dismiss her petition. Pet'r Mot. at 1.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), petitioner must prove either 1) that KMB suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to her vaccination, or 2) that she 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 KMB suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that KMB's 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 the medical records do not support petitioners' 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 KMB suffered a "Table Injury" or that her injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran
Christian J. Moran
Special Master