

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

SHANAY HALL, as parent and natural guardian of, A.H.,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

No. XX-XXXv
Special Master Christian J. Moran

Filed: June 30, 2011
Reissued: July 25, 2011

Motion for a decision dismissing the petition; insufficient proof.

Diana L. Stadelnikas, Maglio, Christopher and Toale, Sarasota, FL, for petitioner; Darryl R. Wishard, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Shanay Hall, as parent and natural guardian of her son, A.H., filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., on August 12, 2009. Her petition alleged that A.H. suffered from Guillain-Barre syndrome and hypertension, resulting from the receipt of the Hepatitis A and Varicella vaccines, administered to him on August 27, 2007. The information in the record, however, does not show entitlement to an award under the Program.

I. Procedural History

On October 13, 2009, petitioner filed her initial medical records, as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A). These records were

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.

incomplete and petitioner was ordered to file additional ones. Petitioner filed the additional medical records, along with a statement of completion by June 14, 2010.

Respondent filed her responsive report on August 26, 2011. In this report, respondent recommended that entitlement be denied and the petition dismissed because petitioner failed to provide sufficient evidence of vaccine causation for Ayvante's GBS. Resp't Rep't at 10.

On June 24, 2011, petitioner filed the expert report of Dr. Marcel Kinsbourne, along with her unopposed motion for a decision dismissing her petition. Dr. Kinsbourne opined that it is "unlikely that the vaccine either caused or substantially contributed to the causation of A.H.'s GBS." Exhibit 8 (Dr. Kinsbourne), at 2.

In support of petitioner's motion, petitioner states that an investigation of the facts and science supporting A.H.'s case had demonstrated to petitioner that she will be unable to prove that A.H. is entitled to compensation in the Vaccine Program. Further, petitioner states that to proceed with her case would be unreasonable and would waste the resources of the court, respondent, and the Vaccine Program. Petitioner states that she understands that a decision dismissing the petition will result in a judgment against her. Petitioner states that respondent has no objection to this motion. Accordingly, petitioner requests that the undersigned dismiss her petition. Pet'r Motion at 2.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), petitioner must prove either 1) that A.H. suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that he 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 A.H. suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that A.H.'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 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 A.H. 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.**

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