In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

JANET ANN LE GRAND RICE and EDWARD GORDON RICE in their own right and as best friends of their son, COLIN MATTHEW RICE,	*	No. 09-394V Special Master Christian J. Moran
Petitioners,	*	Filed: July 11, 2012
v.	*	Decision on the record;
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	diabetes; dismissal; insufficient proof.
Respondent.	*	

John F. McHugh, Law Office of John McHugh, New York, NY, for petitioners;
Melonie J. McCall, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION[1]

Janet Ann Le Grand Rice and Edward Gordon Rice, as best friends of their son, Colin Matthew Rice ("Colin") filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., on June 17, 2009. Their petition alleged that Colin received vaccinations, including the polio vaccine, DTaP, Hep B, Hib, Prevnar, and MMR vaccines, on February 25, 2005, April 25, 2005, June 29, 2005, January 16, 2006, and April 25, 2006, during his first two years of life. Pet. at 1-2. The petition also alleged that Colin developed diabetes as a reaction to those vaccinations. The information in the record, however, does not show entitlement to an award under the Program.

[1] The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this ruling on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

I. Procedural History

Petitioners filed a petition, along with their initial medical records (exhibits 1-9) on June 17, 2009. Following this submission, an initial status conference was held on August 24, 2009. During this conference, petitioners made a request to stay the case pending the outcome of a companion case. See Crutchfield v. Sec'y of Health & Human Servs., No. 09-39V.

On September 2, 2009, respondent filed a status report, indicating that she had no objection to a stay in the case pending the outcome of the case identified by petitioners as a companion case. Accordingly, an order was issued on September 22, 2009 directing petitioners to file a status report by February 10, 2010, updating the court on the progress of Crutchfield. Petitioners filed this update on February 17, 2010.

This case remained stayed through March 30, 2012, as petitioners continued to update the court on the progress of Crutchfield. On March 30, 2012, a status conference was held. During this conference, petitioners were ordered to file a status report by April 30, 2012, regarding how they wished to proceed with their case.

On May 1, 2012, petitioners again filed a status report requesting that the case be held in abeyance until a determination in Crutchfield. A status conference was held one day later, at which time, petitioners represented that the Crutchfield case may not determine all issues that may arise in their case. The parties determined to move forward with this case. Petitioners expressed an interested in obtaining updated medical records and a letter from Matthew's pediatrician. A deadline for the records and letter from the pediatrician was set for June 29, 2012.

Petitioners did file updated medical records on June 29, 2012; however, petitioners reported that they had not yet obtained an expert. Exhibits 10-13. On July 2, 2012, petitioners filed a motion for a decision on the record. Petitioners stated that after a full review of the record, petitioners agree "that no further effort on this claim is merited and [they] seek a decision on the record as it stands." Pet'r mot. at 1. During a status conference held on July 10, 2012, respondent represented that the Secretary would not file a response to this motion. Accordingly, this case is now ready for adjudication.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), petitioners must prove either 1) that Colin suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to 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 Colin suffered a "Table Injury." Thus, he is necessarily pursuing a causation-in-fact claim.

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. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Colin 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