

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ERIN GRACE MCALHANY, A Minor, *
by her Parents and Natural Guardians, *
FRANK MCALHANY and LEIGH *
A. MCALHANY *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 10-114V
Special Master Christian J. Moran

Filed: April 4, 2011

Petitioners’ Motion for a Decision
Dismissing their Petition;
Insufficient Proof of Causation;
Vaccine Act Entitlement

James M. Griffin, Griffin Law, Columbia, SC, for petitioner;
Lisa A. Watts, United States Dep’t of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Frank and Leigh McAlhany, as parents of their daughter, Erin Grace McAlhany (“Erin”), filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., on February 19, 2010. Their petition alleged that Erin had an adverse reaction, including “permanent seizure disorder and related brain injury”, resulting from the receipt of the Pediarix and Pneumovax vaccines

¹ Because this unpublished decision contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

administered to her on January 23, 2007. The information in the record, however, does not show entitlement to an award under the Program.

I. Procedural History

On April 30, 2010, petitioners filed their initial medical records, as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A). These records were incomplete and they were ordered to file additional ones. Petitioners filed their additional medical records, along with a statement of completion by June 4, 2010.

Respondent filed her responsive report on July 14, 2010. Respondent asserts that petitioners have failed to establish by preponderant evidence that Erin's injuries were caused-in-fact by the Pneumovax or Pediatrx vaccines administered to her on January 23, 2007, and thus, are not entitled to compensation.

A status conference was held on August 27, 2010. During this conference, discussions were held concerning petitioners' ability to obtain an expert report. Petitioners were ordered to file a status report by October 27, 2010, regarding their progress in obtaining an expert. Petitioners did not file this report.

Instead, petitioners filed a status report on January 31, 2011 requesting a ruling upon the record. Petitioners state that they do not have any additional evidence to submit to the court.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), petitioners must prove either 1) that Erin suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, 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 Erin suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Erin'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. Petitioners, however, have offered no such opinion.

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