

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

PRIMITIVO SUAREZ-WOLFE and *
GINGER WOLFE-SUAREZ, legal *
Representatives of a minor child, INIGO *
WOLFE-SUAREZ *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

No. 10-572V
Special Master Christian J. Moran

Filed: June 17, 2011

Petitioners' motion for a decision
dismissing their petition; Insufficient
proof.

Primitivo and Ginger Wolfe-Suarez, for petitioner;
Julia W. McInerney, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Primitivo and Ginger Wolfe-Suarez, as parents of their son, Inigo Wolfe-Suarez ("Inigo"), filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., on August 23, 2010. Their petition alleged that Inigo had an adverse reaction, including ongoing neurological damage and developmental delays, resulting from the receipt of the hepatitis B vaccine administered to him on August 30, 2007. The information in the record, however, does not show entitlement to an award under the Program.

I. Procedural History

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

During a status conference held on April 4, 2011, petitioners represented that they wished to exit the Vaccine Program. On June 10, 2011, petitioner did file a motion for a decision dismissing their petition. In support of their motion, petitioners stated that an investigation of the facts and science supporting their case had demonstrated to petitioners that they will be unable to prove that Inigo is entitled to compensation in the Vaccine Program. Further, petitioners stated that to proceed with their case would be unreasonable and would waste the resources of the court, respondent, and the Vaccine Program. Petitioners stated that they understand that a decision dismissing their petitioner will result in a judgment against them. Accordingly, petitioners request that the undersigned dismiss their petition. Pet'r Motion at 1-2.²

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter “the Program”), petitioners must prove either 1) that Inigo 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 Inigo suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Inigo’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 Inigo 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.

Christian J. Moran
Special Master

² Respondent indicated that she takes no position on this motion and will not be filing a response.