

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**OFFICE OF SPECIAL MASTERS**

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EDWARD NOVAK, Parent of \*  
DANA NOVAK, A Minor, \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

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No. 08-472V  
Special Master Christian J. Moran

Filed: May 21, 2010

Ruling on record; measles-mumps-  
rubella (MMR), Inactivated Polio  
vaccine (IPV), Diphtheria-Tetanus-  
acellular-Pertussis (DtaP) vaccine,  
diabetes.

**UNPUBLISHED DECISION<sup>1</sup>**

On June 27, 2008, Edward Novak, on behalf of his minor daughter, Dana Novak, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). In the petition, Mr. Novak alleged that Dana suffers from diabetes as a result of the measles-mumps-rubella (MMR), Inactivated Polio vaccine, and Diphtheria-Tetanus-acellular Pertussis vaccinations she received on July 1, 2005. The information in the record, however, does not show entitlement to an award under the Program.

To receive compensation under the Program, a petitioner must prove either: 1) she suffered a “Table Injury” - i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of her medical problems were actually caused by the vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the filed medical records, however, did not uncover any evidence that Dana suffered a “Table Injury.” Furthermore, the records do not contain a medical expert’s opinion indicating that any of Dana’s

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

problems were related to the vaccine in question.

Under the statute, 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 the medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioner's claims, a medical opinion must be offered in support. Petitioner, however, offered no such opinion.

On April 23, 2010, Mr. Novak requested a decision dismissing his petition explaining that in a recent decision in the "lead case" of the Type 1 Diabetes Omnibus Proceeding, Special Master Vowell held that the petitioner, Thomas Hennessey, did not demonstrate that vaccines can cause type 1 diabetes or could significantly aggravate an underlying condition of type 1 diabetes. This decision was sustained by the Court. Hennessey v. Sec'y of Health & Human Servs., 91 Fed. Cl. 126 (2010). Mr. Novak stated that because the evidence he would present would be similar to that presented in the Hennessey case, he has decided that to proceed further would be unreasonable and a waster of judicial resources. Thus, Mr. Novak has requested a decision dismissing his case. The court hereby grants petitioner's motion for ruling on the record and makes its decision based on the written filings. Vaccine Rule 8(d).

Under the law, compensation may only be awarded when a medical condition either falls within one of the "Table Injury" categories, or is shown by competent medical opinion to be vaccine-caused. No such proof exists in the record. Accordingly, it is clear from the record that Mr. Novak failed to demonstrate either that Dana suffered a "Table Injury" or that her condition was "actually caused" by a vaccination.

Therefore, the only alternative remains is to DENY this petition. In the absence of a motion for review, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran  
Special Master