

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-165V

Filed: June 16, 2011

Not to be Published

RAYMOND J. BRENNAN and
CARMEN W. BRENNAN,
Guardians ad Litem for
Tiana R. Brennan, a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

Dismissal; Proof of Causation; Attorney
Fees and Costs

DECISION DISMISSING PETITION AND AWARDING ATTORNEY FEES AND COSTS ¹

On January 25, 2005, petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program [“the Program”],² alleging that Tiana R.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa (2006).

Brennan ["Tiana"] was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14. The information in the record does not show entitlement to an award under the Program.

On June 15, 2011, the petitioners moved to dismiss their petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

To receive compensation under the Program, petitioners must prove either 1) that Tiana suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that Tiana suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A) and 11(c)(1). Examination of the record does not disclose any evidence that Tiana suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Tiana's alleged injury was vaccine-caused.

Under the Vaccine Act, a petitioner may not be awarded compensation based on the petitioner's claims alone. Rather, the petition must be supported by either the medical records or by a medical opinion. § 13(a)(1). In this case, the record does not contain medical records or a medical opinion sufficient to demonstrate that the vaccinee was injured by a vaccine. For these reasons, in accordance with § 12(d)(3)(A), the **petitioners' motion to dismiss is granted.**

The petitioners have also filed an unopposed motion for an award of attorney fees and costs in this case. Petitioners may receive reasonable attorney fees and costs pursuant to § 15(b) and (e)(1). Respondent has reviewed the motion and does not object. Accordingly, I hereby award the **total of \$6665.65**¹. This total represents \$300.97 in petitioner's personal costs, and \$6364.68 in attorney fees and costs. The payment shall be:

- 1. a lump sum of \$6364.68, in the form of a check payable jointly to petitioners, Raymond and Carmen Brennan, and petitioners' counsel, Thomas P. Gallagher/Gallagher and Gallagher Law Firm LLC, for attorney fees and costs; and**
- 2. a lump sum of \$300.97, in the form of a check payable to petitioners, Raymond and Carmen Brennan, for out-of-pocket expenses personally incurred by petitioners.**

The petition is dismissed for insufficient proof. Petitioners are awarded reasonable attorney fees and costs pursuant to § 15(b) and (e)(1), as I find that the

¹ This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir. 1991).

petition was brought in good faith and upon a reasonable basis, and the amounts requested are reasonable and appropriate.

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.³

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Special Master

³ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).