In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 2-1130V
Filed: April 15, 2011

O.C. DORHAM and TERYL DORHAM, parents of Alexis Dorham, a minor,	*	
	*	Petitioners' Motion for a Decision
Petitioners,	*	Dismissing their Petition;
	*	Insufficient Proof of Causation;
v.	*	Vaccine Act Entitlement; Denial
	*	Without Hearing
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

DECISION[1]

On September 6, 2002, petitioners filed a Short-Form Autism Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ["the Program"],[2] on behalf of Alexis Dorham ["Alexis"]. In effect, the special "Short-Form" developed for use in the context of the Omnibus Autism Proceeding alleges that various vaccinations injured Alexis. The information in the record, however, does not show entitlement to an award under the Program.

On April 12, 2011, petitioners filed a Motion for a Decision Dismissing their Petition. Petitioners assert in the Motion that under the current applicable law they will be unable to demonstrate entitlement to compensation in the Program. Petitioners' Motion at 1. Accordingly, petitioners request that I dismiss the above-captioned petition. Id.

[1] Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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), a party has 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] National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

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

Under the Act, petitioners may not be given a Program award based solely on the petitioners' 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 supporting petitioners' claim are insufficient, 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 Alexis suffered a "Table Injury" or that Alexis's injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**[2]

IT IS SO ORDERED.

Denise K. Vowell
Special Master

[2]The undersigned notes that if petitioners elect to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law petitioners will need to first establish proof of vaccination and the timely filing of the Petition for Vaccine Compensation, see § 300aa-16(a)(2) and 16(b), prior to any award for attorneys' fees and costs being granted. See Brice v. Secretary of Health and Human Services, 358 F.3d 865, 869 (Fed. Cir. 2004), citing Martin v. Secretary of Health and Human Services, 62 F.3d 1403, 1406 (Fed. Cir. 1995).