

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

No. 06-429V

Filed: March 16, 2011

Not to be Published

LORINDA ROBERTS and
BILLY LANDON ROBERTS,
legal representatives of a minor child,
KADEN CHARLTON ROBERTS,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Petitioners' Motion for a Decision
On the Record; Insufficient Proof
of Causation; Vaccine Act
Entitlement

DECISION¹

Vowell, Special Master:

On May 26, 2006, Lorinda and Billy Landon Roberts ["petitioners"] filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ["the Program"],² on behalf of their son, Kaden Charlton Roberts ["Kaden"]. The petition alleges that various vaccinations injured Kaden. On March 3, 2011, petitioners filed a request that their case be decided on the record as it now stands. Because the information in the record does not show entitlement to an award under the Program, this case is dismissed.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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).

I. The Omnibus Autism Proceeding

This case is one of more than 5,000 cases filed under the Program in which it has been alleged that disorders known as “autism” or “autism spectrum disorder” [“ASD”] were caused by one or more vaccinations. A detailed history of the controversy regarding vaccines and autism, along with a history of the development of the more than 5,000 petitions filed in this court, was set forth in the six entitlement decisions issued by three special masters as “test cases” for two theories of causation litigated in the OAP and will not be repeated here.³

Ultimately, the Petitioners’ Steering Committee [“PSC”], an organization formed by attorneys representing petitioners in the OAP, litigated six test cases presenting two different theories on the causation of ASDs. The first theory alleged that the measles portion of the measles, mumps, rubella vaccine could cause ASDs [“Theory 1”]. That theory was presented in three separate Program test cases during several weeks of trial in 2007. The second theory alleged that the mercury contained in thimerosal-containing vaccines could directly affect an infant’s brain, thereby substantially contributing to the causation of ASD. That theory was presented in three additional test cases during several weeks of trial in 2008.

Decisions in each of the three test cases pertaining to the PSC’s first theory rejected the petitioners’ causation theories. *Cedillo*, 2009 WL 331968, *aff’d*, 89 Fed. Cl. 158 (2009), *aff’d*, 617 F.3d 1328 (Fed. Cir. 2010); *Hazlehurst*, 2009 WL 332306, *aff’d*, 88 Fed. Cl. 473 (2009), *aff’d*, 604 F.3d 1343 (Fed. Cir. 2010); *Snyder*, 2009 WL 332044, *aff’d*, 88 Fed. Cl. 706 (2009).⁴ Decisions in each of the three “test cases” pertaining to the PSC’s second theory also rejected the petitioners’ causation theories, and petitioners in each of the three cases chose not to appeal. *Dwyer*, 2010 WL 892250; *King*, 2010 WL 892296; *Mead*, 2010 WL 892248. Thus, the proceedings in these six test cases are concluded. Petitioners remaining in the OAP must now decide to pursue their case, and submit new evidence on causation, or take other action to exit the Program. The petitioners in this case have requested a ruling on the record as it now stands.

II. The Medical Records

Kaden was born February 26, 2002, and appeared to be a healthy newborn. See, e.g., Petitioners’ Exhibit [“Pet. Ex.”] 2.⁵ He received routine childhood vaccinations

³ The Theory 1 cases are *Cedillo v. Sec’y, HHS*, No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Hazlehurst v. Sec’y, HHS*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Snyder v. Sec’y, HHS*, No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are *Dwyer v. Sec’y, HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *King v. Sec’y, HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. Sec’y, HHS*, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

⁴ Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

⁵ Petitioners attached to their Motion for a Ruling on the Record the following: Kaden’s birth records from Bradley Memorial Hospital; Kaden’s pediatric records from Cleveland Pediatrics; Kaden’s pediatric records from Dr. Pepper Henyon, Medical Associates; and a Family Service Plan from STEP. Petitioners indicated that they are relying on these records to support their motion. I have taken

between April 30, 2002, and October 9, 2003. Pet. Ex. 4, p. 1. Kaden experienced normal childhood conditions such as cough and congestion. See, e.g., Pet. Ex. 3, p. 2. Kaden's medical records contain no references to vaccine reactions.

In August, 2004, Kaden's pediatrician referred the Roberts family for hearing, speech, and occupational evaluation. Pet. Ex. 8, p. 3. On November 2, 2004, Kaden was diagnosed with autism by a developmental and behavioral pediatrician. Pet. Ex. 6, p. 1. This pediatrician noted "[t]here is nothing in [Kaden's] exam or history to suggest an etiology." *Id.* at 2. She added, "His disability may have a genetic etiology." *Id.*

III. Causation in Fact

The petition alleged that Kaden's autism spectrum disorder was "caused-in-fact by the thimerosal contained in [various vaccines]." Petition, ¶ 7. To receive compensation under the Program, petitioners must prove either 1) that Kaden suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Kaden 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 Kaden suffered a "Table Injury." Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Kaden's autism spectrum disorder was vaccine-caused. The theory that thimerosal in vaccines can cause autism spectrum disorders was considered and rejected in the Theory 2 test cases. Petitioners have presented no additional evidence demonstrating that thimerosal can cause autism spectrum disorders or that it did cause Kaden's disorder.

A petitioner may not receive 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 there are insufficient medical records supporting petitioners' claim, a reliable 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 Kaden 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.**

IT IS SO ORDERED.

Denise K. Vowell
Special Master

these records into consideration, but I have also relied on the medical records petitioners previously filed (which include the records attached to their motion). For purposes of citation, I have used the previously filed records.