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

No. 05-1351V
Filed: February 6, 2012
Not to be Published

MICHAEL SMITH and DENISE SMITH, Parents of ALEXANDER HUNTER SMITH, a minor, Petitioners, v. SECRETARY OF HEALTH AND HUMAN SERVICES, Respondent.	Autism; Petitioners' Motion for a Decision Dismissing the Insufficient Petition; Proof of Causation; Vaccine Act Entitlement; Denial Without Hearing

DECISION[1]

On December 22, 2005, petitioners filed a Short-Form Autism Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program"),[2] on behalf of their minor child, Alexander Hunter Smith ("Alexander"), which adopted the Master Autism Petition for Vaccine Compensation. The information in the record, however, does not show entitlement to an award under the Program.

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[1] Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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

On February 2, 2012, petitioners moved for a decision dismissing the petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

To receive compensation under the Program, petitioners must prove either 1) that Alexander suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Alexander's vaccinations, or 2) that Alexander 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 Alexander suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Alexander'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 there are insufficient medical records supporting 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 that petitioners failed to demonstrate either that Alexander suffered a "Table Injury" or that Alexander's 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.

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