

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 07-23V
Filed: December 3, 2010
Not to be Published**

ERIC CLAASSEN and JENNIFER
CLAASSEN, as parents and legal
representatives of Ryan Claassen,
a minor,

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 January 16, 2007, Eric and Jennifer Claassen ["petitioners"]² filed a Short-Form Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ["the Program"],³ on behalf of their son, Ryan Claassen ["Ryan"]. In effect, by use of the special "Short-Form" developed for use in the context of the Omnibus Autism

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² Petitioners' latest filing, dated November 10, 2010, lists an address different from their address of record. The Clerk shall send a copy of this decision to petitioners' address of record, and to:

Eric and Jennifer Claassen
10730 Sandpiper Street
Boise, Idaho 83709

³ 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).

Proceeding [“OAP”], the petition alleges that various vaccinations injured Ryan. On November 10, 2010, 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.

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.⁴

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 (2010); *Snyder*, 2009 WL 332044, *aff’d*, 88 Fed. Cl. 706.⁵ 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.

⁴ 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).

⁵ Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

II. The Medical Records

Ryan was born June 5, 2001. See Petitioners' Exhibit ["Pet. Ex."] 11, p. 1. He received routine childhood vaccinations beginning August, 2001. Pet. Exs. 32-38. Ryan experienced normal childhood illnesses such as colds, fevers, rashes, and diarrhea. See Pet. Exs. 11-14, 17, 20. His doctor assessed him to be a "well child" at thirteen months of age. See Pet. Ex. 15, p. 1.

Ryan's medical records contain references to two vaccine reactions. See Pet. Ex. 9, p. 1; Pet. Ex. 16, p. 1. First, at a four-month well child assessment on October 5, 2001, the doctor recorded a history of "vomiting" in the category for "immunization reaction." Pet. Ex. 9, p. 1. Though Ryan received vaccinations that day, this history was likely related to vaccinations he received August 14, 2001, at his two-month well child assessment.⁶ See Pet. Ex. 8, p. 1. There are no other records noting this reaction, and no adverse events are otherwise associated with this vaccine reaction in the record.

Ryan received his only measles, mumps, and rubella ["MMR"] vaccine on July 15, 2002. Pet. Ex. 33, p. 1. One week later, a nursing note indicates he was experiencing a rash and fever. Pet. Ex. 16, p. 1; Pet. Ex. 18, p. 1. As testimony in the Theory 1 OAP cases established, about 10% of children receiving a measles vaccine develop a rash and most develop a fever. Some 5-15% may have a fever of 103° Fahrenheit or higher, but the fever rarely has long-term clinical effects. *Snyder*, 2009 WL 332044, at *99. As I concluded in the *Snyder* case, the Theory 1 general causation evidence was inadequate to establish a causal connection between the MMR vaccine and ASD. *Id.* at *140-47.

In the year following Ryan's MMR vaccination and initial reaction, he had a physician visit on September 11, 2002, for a rash, variously described as "viral exanthem," possible roseola, or heat rash (Pet. Ex. 20, p.1), but no other medical records for treatment during that year were filed.

In July, 2003, Ryan's pediatrician referred the Claassens to speech evaluation. Pet. Exs. 30-31. The pediatrician then noted on May 24, 2004, that Ryan had received an autism diagnosis. Pet. Ex. 26, p. 1. This pediatrician noted Ryan had a "history of speech delay" in that same record. *Id.* Records from the original autism diagnosis and the speech evaluation have not been filed.

III. Causation in Fact

To receive compensation under the Program, petitioners must prove either 1) that Ryan suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Ryan 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 Ryan suffered a "Table

⁶ Ryan received the following vaccines that day: diphtheria, tetanus, acellular pertussis; inactivated polio; haemophilus influenzae type B; hepatitis B; and pneumococcal heptavalent conjugate. See Pet. Exs. 8, 33, 34.

Injury.” Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Ryan’s autism spectrum disorder was vaccine-caused.

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 Ryan 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.**⁷

IT IS SO ORDERED.

Denise K. Vowell
Special Master

⁷ This document constitutes my final “Decision” in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). If petitioners wish to have this case reviewed by a Judge of the United States Court of Federal Claims, a motion for review of this decision must be filed within 30 days. After 30 days the Clerk of this Court shall enter judgment in accord with this decision. If petitioners wish to preserve whatever right petitioners may have to file a civil suit (that is a law suit in another court) petitioners must file an "election to reject judgment in this case and file a civil action" within 90 days of the filing of the judgment. 42 U.S.C. § 300aa-21(a).