

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF THE SPECIAL MASTERS
No. 09-197V
Filed: April 16, 2010**

DAWN JONES, parent of BRENNAR JONES, *
a minor, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES *

Respondent. *

Decision on the Record;
Type 1 Diabetes;
DTaP; MMR; IPV; Failure to
Produce an Expert Report

DECISION ¹

Vowell, Special Master:

On April 1, 2009, petitioner filed a petition in the National Vaccine Injury Compensation Program [“the Program”],² alleging that diphtheria-tetanus-acellular pertussis, measles-mumps-rubella, and inactivated polio vaccinations administered on April 4, 2006 caused her son Brennar Jones [“Brennar”] to suffer Type I insulin dependent diabetes [“T1D”]. Petition at 1. The information in the record, however, does not show entitlement to an award under the Program.

On April 16, 2010, petitioner filed a Motion for a Decision Dismissing [the] Petition. Petitioner asserts in her motion that under the current applicable law she will be unable to demonstrate entitlement to compensation in the Program. Petitioner’s Motion at 2. In her motion, petitioner explained that the evidence on which she expected to rely “is the same as that presented by Thomas Hennessey.” *Id.* at 2.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’s website,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

Petitioner acknowledged that in Mr. Hennessey's case, which served as a test case for evidence of a causative link between the hepatitis B vaccine and T1D, I found that petitioner did not demonstrate that vaccines can cause T1D or significantly aggravate an underlying condition of T1D. See *Hennessey v. Sec'y, HHS*, No. 01-190V, 2009 WL 1709053 (Fed. Cl. Spec. Mstr. May 29, 2009), *aff'd*, 91 Fed. Cl. 126 (2010). Petitioner has therefore requested that I dismiss the above-captioned petition. Petitioner's Motion at 1.

To receive compensation under the Program, petitioner must prove either 1) that Brennar suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Brennar 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 Brennar suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Brennar's alleged injury 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 petitioner's claim, a reliable medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Brennar 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.

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