

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 07-40V  
Filed: October 26, 2010  
Not to be Published**

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CRAIGMILES M. MCINTYRE, a minor,  
by his parents and natural guardians,  
STEWART M. MCINTYRE and AMY  
E.C. MCINTYRE,

Petitioners,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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

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**DECISION<sup>1</sup>**

**Vowell**, Special Master:

On January 22, 2007, Stewart and Amy McIntyre ["petitioners"] filed a Short-Form Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ["the Program"],<sup>2</sup> on behalf of their son, Craigmiles McIntyre ["Craigmiles"]. In effect, by use of the special "Short-Form" developed for use in the context of the Omnibus Autism Proceeding, the petition alleges that various vaccinations injured Craigmiles. On October 15, 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.

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 Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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

<sup>2</sup> 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 Medical Records

Craigsmiles was born on March 25, 2003, with Apgar<sup>3</sup> scores of nine and ten. Petitioners' Exhibit ["Pet. Ex."] 2, p. 1. He received the recommended childhood vaccinations through two years of age. See Pet. Ex. 3, p. 1. Craigsmiles had his two-year well visit with his pediatrician on March 29, 2005. The pediatrician noted that "[h]is speech is delayed, he says a few words, but he does not make any sentences." Pet. Ex. 1, p. 13. The doctor also noted that he had concerns about Craigsmiles at 18 months of age and consulted with another physician about those concerns. *Id.* The notes from this two-year visit reflect that the pediatrician was "concerned that this child might have some form of [ ] autism or some other disease process." *Id.* The pediatrician referred the McIntyres for a diagnostic evaluation, and Craigsmiles was subsequently diagnosed with developmental delay. Pet. Ex. 8, p. 1. Though the exact date of his autism diagnosis is not indicated in the medical records, Craigsmiles had been diagnosed by April 10, 2006. See Pet. Ex. 12, p. 1.

## II. Causation in Fact

To receive compensation under the Program, petitioner must prove either 1) that Craigsmiles suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Craigsmiles 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 Craigsmiles suffered a "Table Injury." Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Craigsmiles'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 Craigsmiles 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.**<sup>4</sup>

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<sup>3</sup> The Apgar score is a numerical assessment of a newborn's condition, usually taken at one minute and five minutes after birth. The score is derived from the infant's heart rate, respiration, muscle tone, reflex irritability, and color, with from zero to two points awarded in each of the five categories. See DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1670 (30th ed. 2003).

<sup>4</sup> This document constitutes my final "Decision" in this case, pursuant to § 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

**IT IS SO ORDERED.**

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**Denise K. Vowell**  
Special Master

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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. § 300aa-21(a).