

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 05-242V  
Filed: July 22, 2010**

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SHIRLEY SMITH, parent of Jordan  
Smith, a minor,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Decision on the Record;  
Type 1 Diabetes; Thimerosal  
Containing Vaccines; Failure  
to Prosecute

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

**Vowell**, Special Master:

On February 22, 2005, petitioner filed a petition in the National Vaccine Injury Compensation Program [“the Program”],<sup>2</sup> alleging that thimerosal-containing vaccinations administered on September 26, 1998 caused her son Jordan to suffer Type I insulin dependent diabetes [“T1D”]. See Petition at 1. This case was part of an omnibus proceeding regarding whether vaccines cause T1D. On May 29, 2009, I issued a decision denying entitlement in *Hennessey v. Sec’y, HHS*, No. 01-190V, the lead case in the omnibus proceeding. In my order filed October 22, 2009, I stayed each of the omnibus cases pending the issuance of Senior Judge Bruggink’s decision on petitioner’s motion for review in *Hennessey*. Senior Judge Bruggink denied Mr. Hennessey’s motion for review on December 14, 2009. In my order filed January 13, 2010, I further stayed these cases pending Mr. Hennessey’s decision whether to file an

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 Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in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

<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).

appeal of his case with the United States Court of Appeals for the Federal Circuit. Mr. Hennessey did not appeal his case.

During a telephonic status conference held February 17, 2010, counsel for petitioner indicated that he would consult with petitioner regarding how to proceed in this case and that he would recommend dismissal in light of Senior Judge Bruggink's decision in *Hennessey*. I ordered petitioner to file either (1) a motion for a decision dismissing her petition, or (2) a status report informing the court how she wishes to proceed by no later than April 19, 2010. I subsequently granted petitioner two enlargements of time to comply with that order.

On June 14, 2010, petitioner filed a status report wherein her counsel advised the court that petitioner has been unresponsive to her counsel's efforts to contact her. I issued an order to show cause why this case should not be dismissed for failure to prosecute on June 15, 2010. Petitioner filed a status report on July 15, 2010 wherein her counsel again advised the court that petitioner has been unresponsive to her counsel's efforts to contact her.

I warned petitioner that noncompliance with court orders will not be tolerated. See Order filed June 15, 2010. Failure to follow court orders shall result in dismissal of petitioner's claim. See *id.* (citing *Tsekouras v. Sec'y, HHS*, 26 Cl. Ct. 439 (1992), *aff'd per curiam*, 991 F.2d 810 (Fed. Cir. 1993); *Sapharas v. Sec'y, HHS*, 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b)).

To receive compensation under the Program, petitioner must prove either 1) that Jordan suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Jordan 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 Jordan suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Jordan'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 she suffered a "Table Injury" or that her injuries were "actually caused" by a vaccination. Additionally, petitioner has failed to respond to the court's orders in the instant case. **Thus, this case is dismissed for insufficient proof and failure to prosecute. The clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

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