

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-80V

Filed: April 25, 2007

not to be published

KENDRA SUTTON and KINJIE SUTTON, as
natural guardians of Kinjie Sutton, Jr., a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

Vaccine Act Entitlement;
Denial Without Hearing

DECISION¹

On February 2, 2006, the petitioners filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). The petitioners appear to allege that their son, Kinjie Sutton, Jr., contracted bacterial meningitis or suffered an anaphylactic reaction as a result of a hepatitis B vaccination administered on February 10, 2003. The information in the record, however, does not show entitlement to an award under the Program.²

¹This document constitutes my final “decision” in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of this Court shall enter judgment in accord with this decision.

This document will not be sent to electronic publishers as a formally “published” opinion. However, because this document contains a reasoned explanation for my action in this case, I intend to post this document 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). Therefore, each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, this entire document will be available to the public. *Id.* See also 42 U.S.C. § 300aa-12(d)(4)(B).

²The statutory provisions governing the National Vaccine Injury Compensation Program are found in 42 U.S.C. § 300-10 et seq. (2000 ed.).

To receive compensation under the Program, that petitioners must prove either: 1) that Kinjie suffered a “Table Injury” -- *i.e.*, an injury falling within the Vaccine Injury Table -- corresponding to the hepatitis B vaccine, or 2) that any of Kinjie’s medical problems were actually caused by the vaccine. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). My examination of the filed medical records, however, did not uncover any evidence that Kinjie suffered a “Table Injury.” (“Anaphylaxis or anaphylactic shock” are the only specific injuries listed on the Table corresponding with the hepatitis B vaccine). Further, the records do not contain a medical expert’s opinion indicating that Kinjie has suffered a vaccine-caused injury.

Under the statute, a petitioner may not be given a Program award based solely on petitioner’s claims alone. Rather, the petition must be supported by either the medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Petitioners, however, have offered no such opinion, nor an explanation as to why the medical records demonstrate that the petitioner suffered a “anaphylaxis or anaphylactic shock.”

In a motion filed on April 23, 2007, petitioners’ counsel requested that I rule upon the record “as submitted.” I will now do so.

I am, of course, sympathetic to the fact that Kinjie suffers from an unfortunate medical condition. However, under the law I can authorize compensation only when a vaccinee’s medical condition either falls within one of the “Table Injury” categories, or is shown by competent medical opinion to be vaccine-caused. No such proof exists in the record before me. Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Kinjie suffered a “Table Injury” or that his condition was “actually caused” by a vaccination. Therefore, I have no choice but to hereby DENY this claim. In the absence of a timely-filed motion for review of this decision (see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accord with this decision.

George L. Hastings, Jr.
Special Master