In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 02-1863V
Filed: January 28, 2011; Re-issued March 3, 2011

KENT MCIVER and LUANN MCIVER, Parents of E. M., Minor Child, **Petitioners,** **v.** **SECRETARY OF HEALTH AND HUMAN SERVICES** **Respondent.**	UNPUBLISHED DECISION Petitioner's Motion for a Decision Dismissing her Petition; Insufficient Proof of Causation; Vaccine Act Entitlement; Denial Without a Hearing

DECISION[1]

On February 8, 2011, petitioners' counsel filed a motion to redact in this case. On March 2, 2011, the undersigned conducted a digitally recorded status conference in this matter to address petitioners' privacy concerns. During that status conference, petitioners' counsel amended his motion to redaction to redact the minor child's name to reflect only the minor child's initials.

Petitioners' counsel's request is **GRANTED.** The re-issued decision follows.

On December 16, 2002, petitioners filed a Short-Form Autism Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program").[2] In

[1] The undersigned intends 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). As provided by Vaccine Rule 18(b), each party has 14 days within which to file a motion for 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). In the absence of such motion, "the entire" decision will be available to the public. Id.

[2] The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et*

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 E. M. The information in the record, however, does not show entitlement to an award under the Program.

On January 24, 2011, petitioners filed a Motion for a Decision dismissing their Petition. Petitioners assert in the Motion that under the current applicable law they will be unable to demonstrate entitlement to compensation in the Program. Petitioners' Motion at 1. Accordingly, petitioners request that the undersigned dismiss the above-captioned petition. Id.

To receive compensation under the Program, petitioners must prove either 1) that E. M. suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of E. M.'s vaccinations, or 2) that E. M. 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 does not uncover any evidence that E. M. suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that E. M.'s alleged injury was vaccine-caused.

Under the Act, petitioners may not be given a Program award based solely on the petitioners' claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). Because the offered medical records cannot alone support petitioners' claim, a medical opinion must also 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 E. M. suffered a "Table Injury" or that E. M.'s injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.** [3]

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Special Master

---

seq. (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

[3] The undersigned notes that if petitioners elect to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law petitioners will need to first establish proof of vaccination and the timely filing of her Petition for Vaccine Compensation, see § 300aa-16(a)(2) and 16(b), prior to any award for attorneys' fees and costs being granted. See Brice v. Secretary of Health and Human Services, 358 F.3d 865, 869 (2004), citing Martin v. Secretary of Health and Human Services, 62 F.3d 1403, 1406 (1995).