

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

No. 10-421V

Filed: May 15, 2012

LORENA RUGH, on behalf of *
Maryah Rugh, a minor child, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

Petitioner’s Motion for a
Decision Dismissing the Insufficient
Petition; Proof of Causation; Vaccine
Act Entitlement; Denial Without
Hearing

DECISION¹

On July 2, 2010, petitioner filed a petition for vaccine compensation in the National Vaccine Injury Compensation Program (“the Program”),² on behalf of her minor child, Maryah Rugh (“Maryah”). The information in the record, however, does not show entitlement to an award under the Program.

On May 14, 2012, petitioner filed a status report, noting she has been unable to find an expert willing to opine in favor of vaccine causation.³ Additionally, the status report stated that “petitioner consents to dismissal of her claim at this time.” I will interpret this statement as a motion for a decision on the merits of the petition.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

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

³ Petitioner has been granted several extensions and afforded over a year to obtain an expert report. Her initial expert report deadline of May 10, 2011, was set in my February 9, 2011 order.

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

Under the Act, petitioner may not be given 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 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 failed to demonstrate either that Maryah suffered a “Table Injury” or that Maryah’s 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