In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 3-347V
Filed: April 21, 2011

TAMMI PERRICCI PINKLY, parent of Devin Perricci, a minor,	*	
Petitioner,	*	Petitioner's Motion for a Decision Dismissing her Petition; Insufficient Proof of Causation; Vaccine Act Entitlement, Denial Without Hearing
v.	*	
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	

DECISION[1]

On February 14, 2003, petitioner filed a Short-Form Autism Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ["the Program"],[2] on behalf of Devin Perricci ["Devin"]. In effect, the special "Short-Form" developed for use in the context of the Omnibus Autism Proceeding alleges that various vaccinations injured Devin. The information in the record, however, does not show entitlement to an award under the Program.

On April 15, 2011, petitioner filed a Motion for a Decision Dismissing her Petition. Petitioner asserts in the Motion that under the current applicable law she will be unable to demonstrate entitlement to compensation in the Program. Petitioner's Motion at 1. Accordingly, petitioner requests that I dismiss the above-captioned petition. Id.

[1] Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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

To receive compensation under the Program, petitioner must prove either 1) that Devin suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Devin 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 Devin suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Devin'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). In this case, because the medical records supporting petitioner's claim are insufficient, 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 has failed to demonstrate either that Devin suffered a "Table Injury" or that Devin's injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**[2]

IT IS SO ORDERED.

Denise K. Vowell
Special Master

[2]The undersigned notes that if petitioner elects to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law petitioner will need to first establish proof of vaccination and the timely filing of the 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 (Fed. Cir. 2004), citing Martin v. Secretary of Health and Human Services, 62 F.3d 1403, 1406 (Fed. Cir. 1995).