

judgment against petitioner, which will end all of his rights in the Program. Petitioner understands that after judgment is entered, his counsel may apply for fees and costs.

The motion provides that respondent expressly reserves that right, pursuant to 42 U.S.C. § 300aa-15(e), to question the good faith and reasonable basis of the claim and to oppose, if appropriate, the application for fees and costs. In an email to my law clerk on September 19, 2017, respondent's counsel indicated that respondent does not object to the motion for dismissal. The matter is now ripe for review.

To receive compensation in the Program, petitioner must establish either (1) a "Table Injury"—i.e., an injury falling within the Vaccine Injury Table—corresponding to the vaccination, or (2) that a vaccine listed on the Table was the cause-in-fact of the vaccinee's injury. *See* §§ 13(a)(1)(A) and 11(c)(1). Under the Vaccine Act, the Program may not award compensation solely based on a petitioner's own claims. Rather, a petitioner must support his claim with either medical records or the opinion of a competent physician. § 13(a)(1).

In the present case, an examination of the records did not uncover any evidence that A.U.D. suffered a "Table Injury" or any persuasive evidence that the varicella vaccine was the cause of A.U.D.'s injury. Petitioner and his two experts contend that A.U.D. developed limbic encephalitis. Respondent and his expert argue that A.U.D.'s presentation was more consistent with an alternative diagnosis that is not autoimmune in nature. In spring 2017, the parties and I considered scheduling a fact hearing on this issue. In June - July 2017, A.U.D. underwent subcutaneous IVIG treatments, considered to be an effective treatment for limbic encephalitis but not for the proposed alternative diagnosis. The IVIG treatments did not result in noticeable improvement for A.U.D.'s condition. After further consideration and discussion with counsel, petitioner filed a motion to dismiss the case on September 18, 2017. Thus, petitioner has concluded that he cannot establish causation between the varicella vaccine and A.U.D.'s injury.

Based on my review of the record, I find that petitioner has failed to establish either that A.U.D. suffered a "Table Injury" or that the varicella vaccine was the cause-in-fact of A.U.D.'s injury. **Thus, this case is dismissed for insufficient proof. The Clerk of the Court shall enter judgment accordingly.**

IT IS SO ORDERED.

/Thomas L. Gowen
Thomas L. Gowen
Special Master