

and would waste the resources of the Court, the respondent, and the Vaccine Program. Id. Petitioner understands that a decision by the special master dismissing her petitioner will result in a judgment against her and will end all of her rights in the Vaccine Program. Id. Petitioner understands that she may apply for costs once her case is dismissed and judgment is entered against her. Id.

Respondent expressly reserves the right to challenge whether petitioner's claim was timely filed and to oppose, if appropriate, petitioner's application for attorneys' fees and costs. Id. at 2. Respondent otherwise does not oppose the motion for a dismissal decision. Id.

Finally, petitioner intends to protect her right to file a civil action in the future. Id. Thus, she intends to elect to reject the Vaccine Program judgment against her and elect to file a civil action. Id. This 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, petitioner does not claim and the records does not uncover any evidence that J.B.A. suffered a "Table Injury." Neither is there any persuasive evidence that J.B.A.'s seizure disorder and related injuries were caused by the DTaP vaccination. J.B.A. has a SCN1A gene mutation. Variants of this mutation have been associated with neurological conditions such as Dravet Syndrome. While J.B.A. does not have Dravet Syndrome, this represents a significant obstacle to the claim.

Petitioner claims that the SCN1A gene mutation has not caused J.B.A.'s condition. Genetic testing indicates that J.B.A. inherited the gene from a parent. Petitioner (J.B.A.'s mother) indicates that she has the same gene, but she is asymptomatic. Thus, petitioner believes that another factor – i.e., the vaccination – caused J.B.A.'s condition. In May 2017, I allowed petitioner additional time to obtain new counsel and to obtain reports from an expert geneticist and an expert neurologist or immunologist. Petitioner retained new counsel in the same month, but has not filed any expert reports. After further consideration and discussion with counsel, petitioner has now filed a motion to dismiss her claim. Thus, petitioner has concluded that she cannot prove a causal link between the DTaP vaccine and J.B.A.'s condition.

Based on my review of the record, I agree that petitioner will be unable to prove that she is entitled to compensation in the Vaccine Program. **Thus, this case is dismissed for insufficient proof. The Clerk of the Court shall enter judgment accordingly.**

IT IS SO ORDERED.

s/ Thomas L. Gowen

Thomas L. Gowen
Special Master