

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: December 15, 2020

KERSTINA ALEXANDER, *on behalf*
of her minor child, M.A.,

*

No. 18-770V

*

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Petitioner,

*

Special Master Sanders

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v.

*

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

Dismissal; Insufficient Proof; Hepatitis B

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Vaccine; Pneumococcal Vaccine (“Pprevnar

*

13”); DTP-b Vaccine (“Pentacel”); Rotavirus

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Respondent.

Vaccine; Death

Jonathan J. Svitak, Shannon Law Group, Woodbridge, IL, for Petitioner.

Voris E. Johnson, U.S. Department of Justice, Washington, DC, for Respondent.

DISMISSAL¹

On May 31, 2018, Kerstina Alexander (“Petitioner”), on behalf of her minor child, M.A., filed a petition for compensation under the National Vaccine Injury Compensation Program² (“Vaccine Program” or “Program”). 42 U.S.C. § 300aa-10 to 34 (2012). Petitioner alleged that M.A. died due to a Hepatitis B vaccine he received on February 2, 2016; a Hepatitis B vaccine, pneumococcal vaccine (“Pprevnar 13”), DTP-b vaccine (“Pentacel”), and a Rotavirus vaccine he received on March 23, 2016; and Pprevnar 13, Pentacel, and Rotavirus vaccines he received on May 26, 2016. Pet. at 1, ECF No. 1. The information in the record, however, does not show entitlement to an award under the Program.

On December 2, 2020, Petitioner filed an unopposed motion for a decision dismissing her petition. *See* ECF No. 40. In her motion, Petitioner conceded that “[a]n investigation of the facts and science supporting [sic] has demonstrated to the Petitioner that she will be unable to prove that she is entitled to compensation in the Vaccine Program.” *Id.* at 1. She continued, “[i]n these circumstances, to proceed further would be unreasonable and would waste the resources of the

¹ This Decision shall be posted on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the Internet.** 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, the I agree that the identified material fits within the requirements of that provision, such material will be deleted from public access.

² National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755 (“the Vaccine Act” or “Act”). Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Court, the Respondent, and the Vaccine Program.” *Id.* Respondent had no objection to Petitioner’s motion. *Id.* at 2.

To receive compensation under the Program, Petitioner must prove either (1) that she suffered a “Table Injury”—i.e., an injury falling within the Vaccine Injury Table—corresponding to the vaccination, or (2) that she suffered an injury that was actually caused by a vaccine. *See* §§ 13(a)(1)(A), 11(c)(1). An examination of the record did not uncover any evidence that M.A. suffered a Table injury. Further, the record does not contain persuasive evidence that M.A.’s death was caused by any or all of the vaccines he received.

Under the Act, petitioners may not be given a Program award based solely on their claims alone. Rather, the petition must be supported by medical records or the opinion of a competent physician. § 13(a)(1). In this case, the medical records are insufficient to prove Petitioner’s claim, and, at this time, Petitioner has not filed a supportive opinion from an expert witness. Therefore, this case must be **dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**³

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of a notice renouncing the right to seek review.