

On March 9, 2011, the petitioners moved for a decision on the merits of the petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

To receive compensation under the Program, petitioners must prove either 1) that Nicholas suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Nicholas’ vaccinations, or 2) that Nicholas suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A) and 11(c)(1). Examination of the record does not disclose any evidence that Nicholas suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Nicholas’ alleged injury was vaccine-caused.

Under the Vaccine Act, a petitioner may not be awarded compensation based on the petitioner’s claims alone. Rather, the petition must be supported by either the medical records or by a medical opinion. § 13 (a)(1). In this case, the record does not contain medical records or a medical opinion sufficient to demonstrate that the vaccinee was injured by a vaccine. For these reasons, in accordance with § 12(d)(3)(A), **the petitioners’ claim for compensation is denied and this case is dismissed for insufficient proof.**

The petitioners have also filed an unopposed motion for an award of attorneys’ fees and costs in this case. Petitioners are entitled to reasonable attorneys’ fees and costs pursuant to § 15(b) and (e)(1). Respondent has reviewed the motion and does not object. Accordingly, the petitioners are awarded attorneys’ fees in the amount of \$3,657.50 and costs in the amount of \$917.00. In lieu of filing a Vaccine General Order 9 statement, pursuant to the stipulation the firm agrees to reimburse petitioners any costs that petitioners personally incurred that are compensable under § 15 (e)(1).

The petition is dismissed for insufficient proof. Petitioners are awarded reasonable attorneys’ fees and costs pursuant to § 15(b) and (e)(1), as I find that the petition was brought in good faith and upon a reasonable basis, and the amounts requested are reasonable and appropriate.

Pursuant to §15(e), I award a lump sum of \$4,574.50³ to be paid in the form of a check payable jointly to the petitioners and their counsel, Michael T. Gallagher.

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, “advanced costs” as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally Beck v. Sec’y of Dep’t Health and Human Services, 924 F.2d 1029 (Fed. Cir.1991).

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Special Master

⁴ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).