

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-753V

Filed: June 18, 2014

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JERIME MCHERRON and REBECCA  
MCHERRON, as parents and natural  
guardians of J.M., a minor,

Petitioners,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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**UNPUBLISHED**

Special Master Dorsey

Petitioners' Dismissal Motion;  
Insufficient Proof of Causation;  
Vaccine Act Entitlement; Dtap  
Vaccine; Acute Encephalopathy  
and Seizure Disorder

Anne Carrion Toale, Maglio Christopher & Toale, PA, Sarasota, FL, for Petitioners.  
Linda Sara Renzi, United States Department of Justice, Washington, DC, for Respondent.

### **DECISION**<sup>1</sup>

On October 29, 2007, Jerime and Rebecca McHerron, as parents and natural guardians of J.M., a minor, ("petitioners") filed a petition pursuant to the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 *et seq.* (2006) ("Vaccine Act"). Petitioners alleged that, as a result of receiving a Diphtheria-Tetanus-Acellular-Pertussis ("Dtap") vaccination on November 1, 2004, J.M. suffered an acute encephalopathy and seizure disorder.

On May 27, 2014, petitioners filed a motion for a decision dismissing their petition. In their motion, petitioners state that "[a]n investigation of the facts and science supporting their case, as well as an evolution of the case law, has demonstrated ... that they will be unable to

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post this decision on the United States Court of Federal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 and 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, the undersigned agrees that the identified material fits within the requirements of that provision, such material will be deleted from public access.

prove that they are entitled to compensation in the Vaccine Program.” Petitioners state that it would be unreasonable to proceed further and that they understand a decision dismissing their petition will result in a judgment against them and will end all of their rights in the Vaccine Program. Petitioners also state their intent to protect their rights to file a civil action. Respondent did not file a response to petitioners’ motion.

To receive compensation under the Vaccine Act, petitioners must prove either 1) that J.M. suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the child’s vaccinations or 2) that J.M. suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). The undersigned finds that petitioners have not provided preponderant evidence that J.M. suffered a “Table Injury.” While petitioners initially offered a medical expert’s opinion on causation, subsequent genetic testing revealed J.M. has the SCN1A gene variant linked to severe seizures. The record does not contain a medical expert’s opinion connecting the injuries and vaccination in light of the SCN1A gene mutation.

Under the Vaccine Act, a petitioner may not be awarded compensation based solely on the petitioner’s claims. The petition must be supported by either medical records or the opinion of a competent physician. § 300aa-13(a)(1). Here, because the medical records alone are insufficient to establish entitlement to compensation, a medical opinion connecting the injuries and vaccinations must be offered in support. However, petitioners have provided no such opinion.

The only alternative remaining is to DENY this petition. **Thus, this case is dismissed for insufficient proof. In the absence of a motion for review, the Clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

/s/ Nora Beth Dorsey  
Nora Beth Dorsey  
Special Master