

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-374V

Filed: April 4, 2016

Not to be Published

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LARRY GORDON - 53405

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

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Dismissal; Failure to State a Claim

### **DECISION DISMISSING PETITION**

#### ***HASTINGS, Special Master***

On March 24, 2016, Larry Gordon filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”).<sup>1</sup> Mr. Gordon alleges that he suffered various injuries on October 28, 2015, because a dye was administered to him via injection during a magnetic resonance imaging test (“MRI”). The information in the record, however, does not show entitlement to an award under the Program.

A Vaccine Program petition may be dismissed for failure to state a claim, pursuant to RCFC 12(b)(6). That rule requires a petitioner to provide “a short and plain statement of the claim, which shows that the petitioner is entitled to relief.” *Totes–Isotoner Corp. v. United States*, 594 F3d 1346 (Fed.Cir. 2010), (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *Scanlon v. HHS*, No. 13–219V, 2013 WL 5755061 (Fed.Cl.Spec.Mstr. Sept. 27, 2013) *aff’d*, 114 Fed.Cl. 135 (Fed.Cl. 2013); *see also* Vaccine Rule 2(c)(1).

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<sup>1</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

To be eligible for compensation under the Vaccine Act, a petitioner must demonstrate that he “received a vaccine set forth in the Vaccine Injury Table.” §300 aa-11(c)(1)(A). Further, a petitioner must demonstrate that he sustained an injury caused by a vaccine covered by the Vaccine Act. §300 aa-11(c)(1)(C). However, Mr. Gordon has not stated a claim that he received a vaccination set forth in the Vaccine Injury Table, or that a vaccine caused his injuries. The dye that he says was injected into him, plainly was not a vaccine at all, much less a vaccine covered by the Program. Thus, Mr. Gordon’s petition fails to state a claim upon which relief may be granted. Accordingly, his petition is **DISMISSED**. The Clerk shall enter judgment accordingly.

**IT IS SO ORDERED.**

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George L. Hastings, Jr.  
Special Master