

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-0431V

Filed: March 12, 2008

KENNY BILLINGSLEA, a minor,
by his parent and natural guardian
BRENDA MCMURTRY

Petitioner(s),

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

Autism; Statute of Limitations;
Untimely Filing

Richard A. Freese, Birmingham, AL, for petitioner.

Linda S. Renzi, United States Department of Justice, Washington, DC, for respondent.

DECISION¹

The above-named petitioner filed a Short-Form Autism Petition For Vaccine Compensation on June 27, 2007, as well as a "Statement Regarding Timely Filing" and medical records on October 29, 2007. Respondent filed a Motion to Dismiss on December 14, 2007,

¹ Because this decision contains a reasoned explanation for the undersigned's 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, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

asking that the undersigned dismiss this petition because it was untimely filed.² Petitioner filed a Response to Respondent's Motion to Dismiss on January 30, 2008, contesting respondent's Motion to Dismiss.

The undersigned held a telephonic status conference on February 21, 2008 to discuss respondent's Motion to Dismiss. As the undersigned discussed with counsel at the telephonic status conference, despite the passionate arguments of petitioners' counsel, Richard Freese, on behalf of his clients, it is clear from the medical records this case was not filed within "36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury" as required by the Vaccine Act. 42 U.S.C. § 300aa-16(a)(2). Petitioner was not able to point to any medical record showing a timely filing.

Accordingly, respondent's Motion to Dismiss is **GRANTED**. Accordingly, the undersigned finds that petitioner's claim must be dismissed as petitioner has not proved by a preponderance of the evidence that the petition was filed within "36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury" as required by the Vaccine Act. Petitioner's claim is **dismissed**. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

²In relevant part, the Vaccine Act provides "in the case of"

a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury

42 U.S.C. § 300aa-16(a)(2).