

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-0485V

Filed: July 5, 2011

Not to be Published

**TRACY WILLIAMS, Parent of
KATRINA WILLIAMS, a Minor,**

Petitioner,

v.

**SECRETARY OF HEALTH AND HUMAN
SERVICES**

Respondent.

**Failure to Prosecute; Failure to
Follow Court Orders; Dismissal**

DECISION¹

On March 3, 2003, petitioner filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),² alleging that Katrina was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14.

On February 1, 2011, petitioner was ordered to inform the court whether petitioner intended to proceed with this case. Petitioner failed to respond to that order. Her counsel did, however, file an application for attorney fees and costs on February 23,

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² 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.

2011.³ On March 23, 2011, petitioner was again ordered to inform how she intends to proceed. Petitioner failed to respond to that order as well. On May 11, 2011, I convened a telephonic status conference with counsel for the parties. Petitioner's counsel indicated that he has made several attempts to contact his client regarding these orders, but she has not responded to these attempts. Petitioner's counsel then documented this report in a response filed May 13, 2011. Also on May 11, 2011, I issued an order indicating petitioner shall comply with previous orders or otherwise show cause for why this case should not be dismissed for failure to prosecute by no later than June 13, 2011. Following this order, petitioner has taken no further action and failed again to respond.

I. The Omnibus Autism Proceeding

This case is one of more than 5,400 cases filed under the Program in which petitioners alleged that conditions known as "autism" or "autism spectrum disorders" ["ASD"] were caused by one or more vaccinations. A detailed history of the controversy regarding vaccines and autism, along with a history of the development of the OAP, was set forth in the six entitlement decisions issued by three special masters as "test cases" for two theories of causation litigated in the OAP and will not be repeated here.⁴

Ultimately, the Petitioners' Steering Committee ["PSC"], an organization formed by attorneys representing petitioners in the OAP, litigated six test cases presenting two different theories on the causation of ASDs. The first theory alleged that the measles portion of the measles, mumps, rubella vaccine could cause ASDs. That theory was presented in three separate Program test cases during several weeks of trial in 2007. The second theory alleged that the mercury contained in thimerosal-containing vaccines could directly affect an infant's brain, thereby substantially contributing to the causation of ASD. That theory was presented in three additional test cases during several weeks of trial in 2008.

Decisions in each of the three test cases pertaining to the PSC's first theory rejected the petitioners' causation theories. *Cedillo*, 2009 WL 331968, *aff'd*, 89 Fed. Cl.

³ Because of petitioner's failure to indicate how she intends to proceed in this case, I have not acted on this petition for costs, and I suspended the deadline for respondent to respond to it. Once judgment enters on the instant decision, I will order respondent to respond to the costs petition. Alternatively, the parties can confer and informally resolve a final award of attorney fees and costs.

⁴ The Theory 1 cases are *Cedillo v. Sec'y, HHS*, No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Hazlehurst v. Sec'y, HHS*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Snyder v. Sec'y, HHS*, No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are *Dwyer v. Sec'y, HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *King v. Sec'y, HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. Sec'y, HHS*, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

158 (2009), *aff'd*, 617 F.3d 1328 (Fed. Cir. 2010); *Hazlehurst*, 2009 WL 332306, *aff'd*, 88 Fed. Cl. 473 (2009), *aff'd*, 604 F.3d 1343 (Fed. Cir. 2010); *Snyder*, 2009 WL 332044, *aff'd*, 88 Fed. Cl. 706 (2009).⁵ Decisions in each of the three “test cases” pertaining to the PSC’s second theory also rejected the petitioners’ causation theories, and petitioners in each of the three cases chose not to appeal. *Dwyer*, 2010 WL 892250; *King*, 2010 WL 892296; *Mead*, 2010 WL 892248. Thus, the proceedings in these six test cases are concluded. Petitioners remaining in the OAP must now decide whether to pursue their cases, and submit new evidence on causation, or take other action to exit the Program. The petitioner in this case has failed to inform the court how petitioner intends to proceed.

II. Failure to Prosecute

It is petitioner’s duty to respond to court orders. Failure to respond to a court order because petitioner has failed to stay in contact with her attorney is deemed noncompliance with a court order, and noncompliance will not be tolerated. As I reminded petitioner in my May 11, 2011 order, failure to follow court orders shall result in dismissal of petitioner’s claim. *Tsekouras v. Sec’y, HHS*, 26 Cl. Ct. 439 (1992), *aff’d per curiam*, 991 F.2d 810 (Fed. Cir. 1993); *Sapharas v. Sec’y, HHS*, 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b).

III. Causation In Fact

To receive compensation under the Program, petitioner must prove either 1) that Katrina suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Katrina’s vaccinations, or 2) that Katrina suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A) and 11(c)(1). Under the Vaccine Act, a special master cannot find a petitioner has proven her case by a preponderance of the evidence based upon “the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” § 13(a). Petitioner has failed to file sufficient medical records and evidence in this case. Thus, an examination of the record did not uncover any evidence that Katrina suffered a “Table Injury.” Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Katrina’s autism spectrum disorder was vaccine-caused.

⁵ Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Katrina suffered a “Table Injury” or that Katrina’s injuries were “actually caused” by a vaccination. **This case is dismissed for insufficient proof and for failure to prosecute. The clerk shall enter judgment accordingly.**⁶

IT IS SO ORDERED.

Denise K. Vowell
Special Master

⁶ If petitioner elects to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law petitioner will need to first establish proof of vaccination and the timely filing of their Petition for Vaccine Compensation, see §§ 16(a)(2) and 16(b), prior to any award for attorneys’ fees and costs being granted. See *Brice v. Sec’y, HHS*, 358 F.3d 865, 869 (2004), citing *Martin v. Sec’y, HHS*, 62 F.3d 1403, 1406 (1995).