

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-0854V

Filed: April 20, 2010

Not to be Published

EDWARD G. MILLER and
MICHELLE S. MILLER, parents of,
JACKSON CALHOUN MILLER, a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

Dismissal; Failure to Follow Court
Orders; Failure to Submit Supporting
Medical Records or Expert Opinion;
Failure to Prosecute

DECISION¹

The above-named petitioners filed a Short-Form Autism Petition For Vaccine Compensation on April 28, 2003. Thereafter, petitioners failed to file medical records and/or a “Statement of Compliance with Phase One Medical Records Production” as ordered by the undersigned on November 14, 2008, July 22, 2009, and October 23, 2009.

The undersigned repeatedly warned petitioners that noncompliance with court Orders would not be tolerated and could lead to dismissal of petitioners’ claim. See Order filed July 22, 2009; Order filed October 23, 2009. Further, the undersigned warned petitioners in the court’s

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.

October 23, 2009 Order, that “failure to follow court Orders, as well as failure to file medical records, or an expert medical opinion shall result in dismissal of petitioner’s claim.” Order filed October 23, 2009 citing Tsekouras v. Sec’y of HHS, 26 Cl. Ct. 439 (1992), 991 F.2d 810 (Fed. Cir. 1993) aff’d per curiam without opin.; Sapharas v. Sec’y of HHS, 35 Fed. Cl. 503 (1996).

Petitioners have failed to file any medical records or the opinion of an expert to support petitioners’ claim in the instant case.² Additionally, petitioners have failed to respond to any of the court’s Orders in any manner in the instant case. Accordingly, pursuant to Vaccine Rule 21(b), the undersigned dismisses petitioners’ claim for failure to prosecute or comply with the Vaccine Rules, or the court’s Orders. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

Denise K. Vowell
Special Master

² The Vaccine Act provides that a special master cannot find that 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 medical opinion.” 42 U.S.C. § 300aa-13 (a). Petitioner’s failure to file medical records has prevented the undersigned from addressing any aspect of the merits of petitioner’s claim.