

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: October 20, 2003)

FILED
OCT 20 2003
U.S. COURT OF
FEDERAL CLAIMS

IN RE: CLAIMS FOR VACCINE INJURIES *
RESULTING IN AUTISM SPECTRUM *
DISORDER OR A SIMILAR *
NEURODEVELOPMENTAL DISORDER *

AUTISM MASTER FILE

VARIOUS PETITIONERS, *

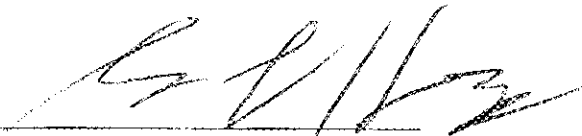
v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

ORDER PLACING ADDITIONAL FILINGS OF RESPONDENT CONCERNING STEWART INTO MASTER FILE

The attached four documents were filed by the respondent in the individual autism Vaccine Act case of Stewart v. Secretary of HHS, No. 02-819V. These four documents, together with the documents that I placed into the Autism Master File on October 8, 2003, set forth the respondent's position concerning the procedural issues that I decided in the opinions entitled Stewart v. Secretary of HHS, 2002 WL 319695743 (Fed. Cl. Spec. Mstr. Dec. 30, 2002), and Stewart v. Secretary of HHS, No. 02-819V (Fed. Cl. Spec. Mstr. Sept. 3, 2003) (published citation not yet available). (These Stewart opinions themselves were placed into the Autism Master File by my Order dated September 9, 2003.)


George L. Hastings, Jr.
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

_____)
KIM STEWART, Parent of)
HEATH STEWART, a Minor,)
)
Petitioner,)
)
v.) No. 02-819V
) Sp. Mstr. Hastings
SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
)
Respondent.)
_____)

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AUG 15 2002

THE OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

MOTION TO DISMISS

On July 18, 2002, petitioner filed a case under the National Childhood Vaccine Injury Act (Vaccine Act) alleging that her son, Heath, developed autism or an autistic spectrum disorder as a result of receipt of childhood vaccines. Petitioner filed her case using a "Short Form Autism Petition for Vaccine Compensation" authorized by the Autism General Order #1 issued on July 3, 2002, by the Chief Special Master. In keeping with that General Order, the petition contains no supporting affidavits or medical records as required by the Vaccine Act. Inasmuch as the Chief Special Master was without authority to waive the statutory requirements for filing a vaccine petition, and because the petition filed in this case fails to meet those requirements, this case must be dismissed.

Argument

The Chief Special Master's Autism General Order sets forth a plan for processing all claims under the Vaccine Act seeking compensation for alleged vaccine-related autism spectrum disorders. The justification for developing this plan was an "influx of Program claims and the potential for many more such claims." Autism General Order, p. 2. The Order indicates the Chief Special Master's intention to address these cases in a two-step process in which general issues of causation are resolved first in an Omnibus Autism Proceeding, with the findings being applied to individual cases. It states in pertinent part:

[p]ersons who have autism-related claims for which they have not yet filed Program petitions, and who wish to have their cases stayed during the Omnibus Autism Proceeding, may file their petitions by filing a "Short-Form Autism Petition for Vaccine Compensation" in a form similar to the one set forth as Ex. B. No medical records need be filed with such a short-form petition though each petitioner or his counsel is encouraged to [~~assemble the records~~] so that they will be available for filing if, and when, the petitioner is directed to do so by the special master.

Autism General Order, p. 7.

The Vaccine Act, however, requires that a petition "contain . . . an affidavit, and supporting documentation" demonstrating that the claim meets the jurisdictional and substantive requirements of section 11(c) of the Act. 42 U.S.C. § 300aa-11(c)(1). Further, the Act specifies certain types of records,

such as prenatal, vaccination, and pre- and post-injury physician records, that must accompany the petition. 42 U.S.C. § 300aa-11(c)(2). The only exception to these requirements is for "unavailable" records, in which case the petition must both identify such records and state "reasons for their unavailability." 42 U.S.C. § 300aa-11(c)(3). No exception is provided for the requirement that a supporting affidavit be provided. Moreover, while the Vaccine Act permits the special master to set a "schedule" for filing "assessments, evaluations, prognoses, and such other records . . . necessary for the determination of the amount of compensation to be paid," it contains no similar provision permitting deferred or graduated filing of documents required as part of the petition for compensation. 42 U.S.C. § 300aa-11(e). And finally, the Act requires special masters to enter decisions on petitions "as expeditiously as practicable but not later than 240 days, exclusive of suspended time . . . , after the date the petition was filed." 42 U.S.C. § 300aa-12(d)(3)(A)(ii).

The Court of Federal Claims issued Vaccine Rules elaborating on these filing requirements, mandating that,

(2)(e)(1) . . . every petition shall be accompanied by the following:

(A) Medical records and detailed affidavit(s) supporting all elements of the allegations made in the petition. If petitioner's claim does not rely on medical records alone, but is based on the observations or testimony of any persons, the substance of each

person's proposed testimony in the form of an affidavit executed by the affiant must accompany the petition.

(B) All available physician and hospital records relating to (A) the vaccination itself; (B) the injury or death . . . (C) any post-vaccination treatment of the injured person including all in-patient and out-patient records, provider notes, test results, and medication records; and, if the vaccinee was younger than five years old when vaccinated, (D) the mother's pregnancy and delivery and the infant's lifetime, including physicians' and nurses' notes and test results and all well baby visit records, as well as growth charts, until the date of vaccination.

RCFC, Appendix B, Vaccine Rule (2)(e)(1)(A) and (B). A petition lacking "any" of these records must be accompanied by "an affidavit detailing the efforts made to obtain such records and the reasons for their unavailability." RCFC, Appendix B, Vaccine Rule (2)(e)(1)(C).

The purpose of these filing requirements - both in the Act and the Court's Rules - is clear. It is to set an obligation on petitioners which, when fulfilled, might enable special masters to fulfill their statutory obligation to enter decisions on petitions within the Act's strict time frames. 42 U.S.C. § 300aa-12(d)(3)(A)(ii). By waiving petitioners' responsibility to file supporting documentation with their petitions, the General Autism Order virtually guarantees that no statutory time goals will be realized in any of these cases. In fact, the "Short Form Petitions" - which do not oblige petitioners to identify the vaccine received, when it was received, or the nature or timing of onset of symptoms - do not permit the Court to make even

threshold determinations regarding its jurisdiction.¹

The Chief Special Master was without authority to amend or alter these statutorily mandated filing requirements or to waive requirements set by Rules issued by the Court of Federal Claims. With respect to application of specific provisions of the Vaccine Act, including the Vaccine Act's requirement that petitioners file supporting documentation and affidavits with their petitions, special masters are:

not at liberty to change a statute enacted by Congress. . . . [When] language of the statute is crystal clear and it is supported by the legislative history, the court must defer to its clear meaning. [citations omitted].

Greider v. HHS, 23 Cl. Ct. 348, 350 (1991) (barring Vaccine Act claim when civil action had been filed).

Similarly, the Vaccine Rules of the Court of Federal Claims contained in Appendix B ". . . govern all proceedings before the Court of Federal Claims [including the Office of Special Masters] pursuant to the National Vaccine Injury Compensation Program. . . ." RCFC, Appendix B, Vaccine Rule 1. Under these Rules, the Chief Special Master was permitted to "regulate the applicable practice" only in "matters not specifically provided for in the Vaccine Rules." Id. The Vaccine Rules, consistent with the

¹ The short form petitions authorized by this General Order - which do not contain even minimal case-specific allegations - raise a significant question regarding whether they are legally adequate to stop the running of the Vaccine Act's statute of limitations.

Vaccine Act, provide specifically that supporting affidavits and medical records, or an affidavit explaining the reasons for the unavailability of any medical records, shall be filed with the petition.

Conclusion

The Chief Special Master has no authority to waive the requirements set forth in the Vaccine Act or the Rules of the Court of Federal Claims regarding the documentation that must be filed with petitions for compensation under the Act. In keeping, the provision in the General Autism Order permitting "Short Form Petitions" to be filed without supporting affidavits and medical records is contrary to the Act and the Court's Rules. In the absence of any proper authority permitting such petitions, the instant petition must be dismissed.²

Respectfully submitted,

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Assistant Attorney General

HELENE M. GOLDBERG
Director
Torts Branch, Civil Division

JOHN LODGE EULER
Deputy Director
Torts Branch, Civil Division

² Because a ruling on this motion could affect the growing number of statutorily deficient petitions that are being filed pursuant to the Autism General Order, respondent respectfully requests that the Special Master rule on this motion as soon as practicable.

Mark W. Rogers

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Assistant Director
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Vincent Matanoski by Mark W. Rogers


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Dated:

CERTIFICATE OF SERVICE

I certify that on the 15th of August 2002, a copy of this Motion to Dismiss was served, by first-class mail, postage pre-paid upon:

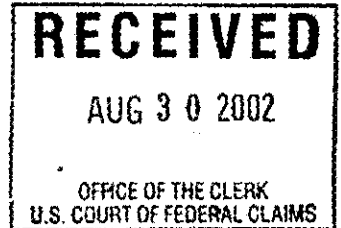
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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

_____)
KIM STEWART, Parent of)
HEATH STEWART, a Minor,)
)
Petitioner,)
)
v.) No. 02-819V
) Sp. Mstr. Hastings
SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
)
Respondent.)
_____)



RESPONSE TO PETITIONER'S MOTION FOR ENLARGEMENT

On August 21, 2002, petitioner filed a motion seeking an enlargement of ninety days to respond to respondent's motion to dismiss. Respondent opposes that motion.

The Vaccine Rules provide fourteen days to respond to a motion. RCFC, Appendix B, Vaccine Rule 20. While an enlargement of that time may be granted, it must be for "good cause." RCFC, Appendix B, Vaccine Rule 19(b). Petitioner's basis for the enlargement is "the importance of the issues raised by respondent in his Motion." Petitioner's Motion for Extension at 1.

Respondent agrees that the issue raised in his motion to dismiss is very significant, not only to this case, but many others recently filed and many about to be filed. Indeed, the importance of the issue, and the impact it will have on this and other cases, require that the issue be resolved expeditiously. The sole issue is whether the Chief Special Master has authority

to alter or amend the petition requirements provided by the Vaccine Act or the Court of Federal Claims' Rules. Respondent's motion considers this question in six pages that discuss three statutory provisions, two rules of court, and one case. Petitioner offered no specific reason why the discrete issue raised in respondent's motion to dismiss cannot be addressed in a timely fashion.

Petitioner's request for an enlargement of ninety days is excessive in light of the discrete issue involved and the other factors favoring rapid resolution. The Vaccine Rules contemplate that motions may typically be responded to within fourteen days. Petitioner's motion seeks an enlargement of more than six times the normal time to respond. In fact, the requested enlargement consumes almost 40% of the statutorily-imposed 240 day period for resolving the entire case. 42 U.S.C. §300aa-12(d)(3)(A)(ii).

Moreover, inordinate delay in resolving this issue could have unintended consequences. For example, respondent notes in his motion that the minimal "short form" petition utilized here and permitted by Autism General Order #1 may not be legally adequate to stop the running of the Vaccine Act's statute of limitations. Further, respondent specifically requested expedited resolution of this motion because a ruling on the issue could potentially affect a large number of cases now being filed under the National Vaccine Injury Compensation Program. The

Autism General Order permitting the type of "short form" petition filed here has only been in effect since July 3, 2002. In the roughly sixty days since then, 159 cases have been filed using the "short form" petition. At that pace, an estimated 240 additional "short form" petitions - cases that could be affected by the ruling here - would be filed during the ninety day enlargement alone.

Respondent, balancing the importance of the issue, its potential impact on cases about to be filed, and its discrete and limited nature, would not oppose an enlargement of seven days. This would enlarge petitioner's deadline for responding to respondent's motion to September 9, 2002.

Respectfully submitted,

ROBERT D. McCALLUM, Jr.
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Dated: 8/30/2002

CERTIFICATE OF SERVICE

I certify that on the 30th of August, 2002, a copy of this Respondent's Response to Petitioner's Motion for Enlargement was served by first-class mail, postage pre-paid, upon, and sent by facsimile transmission to:

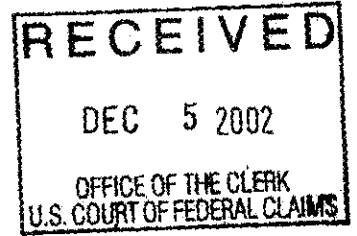
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Lorraine Meredy

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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KIM STEWART, Parent of)
HEATH STEWART, a Minor,)
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Petitioner,)
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v.) No. 02-819V
) Sp. Mstr. Hastings
SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
)
Respondent.)
_____)



RESPONSE TO PETITIONER'S REPLY TO
RESPONDENT'S MOTION TO DISMISS

In her reply to respondent's motion to dismiss, petitioner essentially advances four arguments in support of "short form" petitions. First, that the special masters have wide latitude in conducting proceedings on a Vaccine Act petition. Second, that the "short form" petition is similar to "notice pleading" permitted by some jurisdictions in other litigation. Third, that the purpose of the Vaccine Act in diverting civil actions to the Vaccine Injury Compensation Program is served by "short form" petitions. Finally, petitioner claims that "actual practice" by petitioners, respondent, and the Office of Special Masters is to permit petitions to be filed that do not meet all the requirements of the Act.

All of these arguments fail to reconcile the clear statutory requirement that a petition be accompanied by an affidavit and extensive evidence with the Autism Omnibus General Order

permitting "short form" petitions devoid of these prerequisites. Petitioner's response ignores the clear statutory mandate that petitions be accompanied at the time of filing with certain predicate evidence for bringing a Vaccine Act claim. Clearly, the Office of the Special Masters, who derive their authority to adjudicate vaccine claims solely from the Act, are not free to ignore these statutory requirements. Similarly, the Office of the Special Masters is bound by the Rules of the Court of Federal Claims, which likewise require the evidence the Autism Omnibus General Order excuses.

As an initial matter, while the Special Masters are granted certain authority to determine how proceedings under the Vaccine Act advance after a petition is filed, nothing in the Act suggests that their authority extends to determining the prerequisites for triggering the Act's jurisdiction, i.e., the Congressionally mandated petition requirements. Moreover, the statutory provisions petitioner cites clearly indicate that the special master may require more evidence to be submitted after the petition is filed (e.g., witness testimony, cross-examination) not that the petition itself can be devoid of statutorily-required evidence. In fact, the Rules of the Court of Federal Claims, which require substantial evidence to be submitted with the petition, enjoin the special master to regulate practice under the Act "consistent with these rules."

RCFC, Appendix B, Rule 1.

Second, petitioner's claim that supporting evidence is not required at the time a complaint is filed in some litigation outside the Vaccine Act, actually undermines her argument. Petitioner's argument ignores the incontrovertible fact that Congress could have, but did not, prescribe notice pleading for cases brought under the Act. In stark contrast, Congress required substantial evidence be provided with a vaccine petition. 42 U.S.C. §300aa-11(c)(1). Moreover, these short form petitions would not be sufficient, and would be subject to dismissal, even under "notice pleading." Petitioner does not cite a single jurisdiction which would permit, under standards applicable to "notice pleading," a complaint resembling a "short form" petition. That petition does not identify the vaccine, date of vaccination, the injury, or the date the injury occurred with any particularity. In short, they are inadequate to put the respondent on notice of the claim alleged.

Similarly, while petitioner argues that "short-form" petitions are necessary to "attract cases to the Program," that argument does not address the clear statutory requirement that the petition contain more than is required by the Autism General Order. Pet. Reply at 12. Moreover, the basic premise of petitioner's argument is flawed. Congress did not relax Vaccine Act petition content requirements in order to "attract" cases to

be filed under the Act rather than in other civil litigation fora. Rather, Congress unequivocally required cases that allege vaccine-related injuries to be filed under the Act with all of the evidence statutorily required. Persons alleging such injuries had no option to file elsewhere, so there was no need to "attract" them to file a petition under the Act. To the extent Congress intended to make proceedings under the Act "attractive," it was, in part, by offering a quick (within 240 days) resolution of a claim. This promise can only be fulfilled if the petition is complete when filed. Indeed, the "short form" petition frustrates the Act's purpose in providing a viable alternative to civil litigation because such a claim cannot be evaluated in within the Vaccine Act's narrow 240 day period. The petitioner's option to abandon her Vaccine Act claim and file a civil action will ripen before any meaningful action can be taken on that claim.

Finally, essentially raising an estoppel argument, petitioner reasons "short form" petitions should be permitted because, in the past, respondent has not moved to dismiss other petitions that were filed without all the evidence required by the Act. As a threshold matter, neither the special masters' nor respondent's practices bear on the issue. A "short form" petition must be weighed solely upon whether it does or does not conform with the Act. The parties cannot confer any new

authority upon the Court by their practices. With respect to those practices, however, respondent recognizes that special masters have permitted petitioners to file petitions which, in one respect or another, did not contain the documentation required by the Act and, on occasion, have permitted the filing of petitions containing none of the required documentation. Respondent's practice for deficient petitions has been to identify the missing documents, move for their production, and urge the special master to dismiss the petition if the documents were not provided in a timely fashion. In response, special masters have routinely ordered petitioners to promptly produce the necessary records. If those records and affidavits were not produced, the petition would be dismissed for failure to prosecute. In theory, the foregoing practice, if aggressively administered by the parties and the special masters, would conform to the purpose and spirit of the Act by processing petitions within the 240-day deadline set by the Act.

With a "short form" petition, however, this practice is stretched beyond all reasonable bounds, and cannot be reconciled with the Vaccine Act's letter or spirit. Petitioners filing such are exempt, ab initio, from complying with any of the Act's requirements to document their petitions. Nor is there any reasonable prospect that the deficiencies will be remedied, as the Omnibus General Order exempts petitioners from complying with

the Act's petition content requirements for an indefinite period, virtually guaranteeing that the Act's processing deadlines will not be met.

Respondent requests that the special master act quickly on this motion for two reasons. First, the law is clear - petitions must be filed with an affidavit and supporting documentation. The short form petition clearly does not meet this statutory requirement. Second, failure to expeditiously render a decision on this critical issue will result in irreparable harm, both for respondent and petitioner. Respondent will be unable to evaluate the merits of the claim, or even whether jurisdiction under the Act is properly invoked, before the 240 day statutory period for resolving the claim expires. Petitioner will not have an answer to the critical question of whether the short form petition is sufficient to confer Vaccine Act jurisdiction for statute of limitations purposes. It is vital to resolve this quickly. The special master granted petitioner enlargements to respond to this motion that consumed over one-third of the available 240 day period to evaluate the claim. Little of that period remains. Accordingly, respondent requests that the special master render a decision within the next 30 days.

Respectfully submitted,

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Deputy Director
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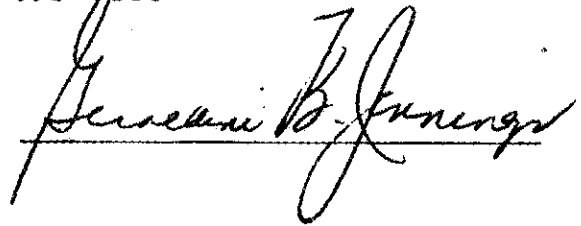
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Dated: 09 DEC 2002

CERTIFICATE OF SERVICE

I certify that on the 4th of December, 2002, a copy of this Response to Petitioner's Reply to Respondent's Motion to Dismiss was served, by first-class mail, postage pre-paid upon:

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

KIM STEWART, Parent of)
HEATH STEWART, a Minor,)
)
Petitioner,)
)
v.)
)
SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
)
Respondent.)

No. 02-819V
Sp. Mstr. Hastings

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THE OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

RESPONSE TO PETITIONER'S MOTION FOR ENLARGEMENT

On February 11, 2003, petitioner filed a motion seeking an enlargement of thirty days to respond to respondent's Motion for Appropriate Relief filed on February 11, 2003. The respondent does not oppose petitioners' motion for enlargement on condition that the special master does not issue the notice set forth in 42 U.S.C. § 12(g) in this case, or any other involving a "short form" petition filed pursuant to Autism General Order #1, pending final resolution of respondent's Motion for Appropriate Relief. Such a stay is needed to preserve the Court's ability to decide whether a short form petition, which does not contain the documentation required by 42 U.S.C. § 11(c), is sufficient to initiate the timetable for withdrawing a petition under 42 U.S.C. § 21(b). In the event the Court ultimately agrees with respondent's position, the requested stay would ensure that no notices are improvidently issued while this matter is under

consideration.

To effectuate this Order, respondent requests the special master publish a notice in the Autism Master File that issuance of the notices required by 42 U.S.C. § 12(g) will be stayed pending final resolution of the issue raised by respondent pertaining to the appropriate inception date of the timetable for withdrawing petitions under 42 U.S.C. § 21(b).


Respectfully submitted,

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Dated: FEB 13 2003

CERTIFICATE OF SERVICE

I certify that on the 13th of February, 2003, a copy of this Respondent's Response to Petitioner's Motion for Enlargement was served by first-class mail, postage pre-paid, upon, and sent by facsimile transmission to:

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Tanya Farley

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

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OVER THE COUNTER

MAR 31 2003

KIM STEWART, Parent of HEATH
STEWART, a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 02-819V
Special Master Hastings

THE OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

RESPONSE TO PETITIONER'S REPLY TO
RESPONDENT'S MOTION FOR APPROPRIATE RELIEF

On January 30, 2003, respondent urged the Special Master not to commence the statutory time frame for proceedings on a petition until the materials specified by 42 U.S.C. § 300aa-11(c)(2) are received. Specifically, respondent requested that the Special Master compute the time for issuing the notice of petitioner's right to withdraw from the Program from the date the materials specified in the Act are filed. Respondent's Motion for Appropriate Relief ("Resp. Mot. App. Relief"), at 7, citing 42 U.S.C. §§ 300aa-11(a)(1) and 21(b). In response, petitioner urged that the motion be denied, asserting her belief "that a special master has the discretion to decide, on a case-by-case basis, whether an injured person can withdraw from the Program and file a civil action after 240 days." Petitioner's Reply to Respondent's Motion for Appropriate Relief ("Pet. Reply"), at 16. As discussed below, petitioner's objections and interpretation of the Act are without merit.

Argument

On August 15, 2002, respondent filed an objection to the "short-form" petition filed in this case. It contended that these petitions violate the Act's requirement that a petition

shall contain certain documentation and affidavits. Respondent's Motion to Dismiss, at 2-3; citing 42 U.S.C. §§ 300aa-11(c)(1) and (2). The Special Master finally ruled on this issue on December 30, 2002, concluding that he "will not" require petitioners to file any of the documentation required by 42 U.S.C. § 11(c) "at this time." Order Denying Motion to Dismiss, at 10.

In response to that ruling, respondent filed a motion for appropriate relief, asking the Special Master to consider the effect of short-form petitions on the withdrawal provisions of 42 U.S.C. § 300aa-21(b). Specifically, respondent urged that the timetable for withdrawing a petition must not commence under the Act until a petition is filed containing the materials specified in 42 U.S.C. § 300aa-11(c). Resp. Mot. App. Relief, at 7.¹

Petitioner argues in response that respondent's motion would "depriv[e] special masters of the broad discretionary powers granted by Congress." Pet. Reply, at 19. In particular, petitioner contends that "a special master has the discretion to decide, on a case-by-case basis, whether an injured person can withdraw from the Program and file a civil action after 240 days." Id., at 16 (emphasis added). Petitioner cites no statutory authority for this assertion, and it is clearly wrong. There is no reference in the Vaccine Act to any discretionary power in any of the provisions relating to petitioners' withdrawal right. In fact, paradoxically, petitioner has

¹ In respondent's view, the Vaccine Act requires that all documentation be filed in the original petition and that the timetable for determining a petitioner's opportunity to withdraw the petition begins at that time. It is only because the Special Master has refused to enforce the filing requirements that an issue has arisen regarding the appropriate onset of that timetable for these deficient petitions.

construed the Act against her own interests. Petitioner's opportunity to withdraw under section 21(b), once the timetable has run, is a matter of right and not subject to the Special Master's discretion. The only issue here regards the appropriate timetable for when that right accrues. On that issue, petitioner's brief is silent.²

Respondent continues to maintain that the Special Master has exceeded his authority and violated the Vaccine Act by allowing short-form petitions. Without withdrawing that primary argument, respondent asked in his motion for appropriate relief that the Special Master rule on a related issue. That is, if short-form petitions are accepted, when would the timetable begin for determining petitioners' opportunity to withdraw such petitions? In respondent's view, Congress clearly envisioned that the 240-day period provided under section 21(b) would not begin until the materials specified in section 11(c) are received. Resp. Mot. App. Relief, at 7-11. The filing requirements of section 11 are specifically incorporated by reference into the timetable provisions of section 21(b). Accordingly, that timetable does not commence until the filing requirements are met. To do otherwise would allow petitioners to withdraw a short-form petition, without ever having met the requirements of section 11. Such a result would frustrate Congress's purpose of providing a meaningful alternative to traditional civil actions and would turn the Program into a meaningless, 240-day delay for claimants

² To the extent petitioner is suggesting that the Special Master has discretion to issue 12(g) notices or to permit petitioners to withdraw from the Program at any time other than specified by the Act, the suggestion must be rejected for lack of any statutory support whatever.

seeking to pursue a civil action.

Were there any doubt about Congress's intentions on this point, it is removed by the legislative history. Section 11 was modified in 1989. The Conference report reflects that 11(c)(2) was added in order to specify the minimum materials which "must be included in the original petition to the Claims Court in order to initiate a compensation proceeding."³ H.R. CONF. REP. NO. 101-386, at 513, reprinted in 1989 U.S.C.C.A.N. 3116 (emphasis added). The report also reflects Congress's anticipation:

that petitions for compensation can be reviewed by the Court for completeness under these standards and that the statutory time frame for compensation proceedings will commence from the receipt of a petition containing the specified materials.

H.R. CONF. REP. NO. 101-386, at 513, reprinted in 1989 U.S.C.C.A.N. 3116 (emphasis added). This makes clear that Congress did not want special masters to start the clock for Vaccine proceedings until after the materials specified by the Act are provided.⁴

³ This requirement was made subject to the affidavit exemption of section 11(c)(3), but that exemption is only available so long as "petitioner makes a good faith effort to supply records and name unavailable ones." H.R. CONF. REP. NO. 101-386, at 515, reprinted in 1989 U.S.C.C.A.N. 3118.

⁴ The legislative history also shows clearly that section 11(c)(2) was crafted by Congress in 1989 to contend with the problem of petitioners "fail[ing] to include adequate information in initial petitions" H.R. CONF. REP. NO. 101-386, at 512, reprinted in 1989 U.S.C.C.A.N. 3115 (emphasis added). Having balanced petitioners' interests against the Secretary's need to substantively review petitions, Congress compiled a list of records which would constitute the minimum requirement for a petition. Id., at 513, 514, 3116, 3117. At the risk of belaboring respondent's argument regarding the legal sufficiency of short form petitions, the short-form petition procedure

(continued...)

Conclusion

In light of the foregoing, the Secretary requests that the Special Master issue the notice required by section 12(g) of the Act no sooner than 240 days after receipt of the materials specified in 42 U.S.C. § 300aa-11(c).

Respectfully submitted,

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Dated: MAR 31 2003

⁴(...continued)
discards Congress's compromise by exempting petitioners from providing any documentation at all with their petitions. As argued in respondent's original motion, the Office of Special Masters has no authority to reformulate the Vaccine Act in this way.

CERTIFICATE OF SERVICE

I certify that on this 31st day of March, 2003, a copy of Respondent's **RESPONSE TO PETITIONER'S REPLY TO RESPONDENT'S MOTION FOR APPROPRIATE RELIEF** was served, by first-class mail, postage pre-paid upon:

Jeffrey Scott Thompson
c/o Conway, Homer & Chin-Caplan, P.C.
16 Shawmut Street
Boston, MA 02116

Melissa A. Pachikara