

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 02-1852V

October 30, 2008

CHERYL KARNS, Parent of *
SCOTT DAVID KARNS, a Minor, *

Petitioner, *
*

v. * Motion to dismiss

premature

SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *

Respondent. *

ORDER¹

On December 13, 2002, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., on behalf of her son Scott David Karns (hereinafter,

¹ Because this order contains a reasoned explanation for the special master's action in this case, the special master intends to post this order on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When an order expressing a reasoned explanation is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

“Scott”), alleging that vaccines caused his neurodevelopmental delay consisting of autism spectrum disorder or a similar disorder. Pet. ¶ 2.

On June 2, 2008, respondent moved to dismiss this case based on the petition’s being filed beyond the 36-month statute of limitations. 42 U.S.C. §300aa-16(a)(2). Respondent states that Scott was diagnosed with pervasive developmental delay, not otherwise specified (PDD-NOS) on September 26, 2002. It is unclear if he was ever diagnosed with autism. Motion at pp. 2-3 and n.2. However, an undated note indicates that Scott spoke his first words at 18 months and did not have more than two to three words until he was three years old. Motion at p. 3. Respondent also notes that a November 6, 2001 record gives a history that Scott’s developmental milestones were delayed with his mother reporting language issues by two years of age, necessitating early intervention. *Id.*

On June 10, 2008, petitioner filed her response to respondent’s Motion to Dismiss. Citing the objective standard the Federal Circuit posited in Markovich v. Sec’y of HHS, 477 F.3d 1353 (Fed. Cir. 2007), petitioner states it is unclear what is the cause of Scott’s speech and language development and that autism is only one cause and one not attributed to Scott. Response at pp. 3, 4. It would be premature to dismiss this case without a complete filing of the medical records (respondent describes them as “limited records filed to date” at p. 4 of the Motion to Dismiss) and an evidentiary evaluation of when Scott’s PDD began as well as whether he has autism. Respondent’s motion is hereby DENIED.

IT IS SO ORDERED.

October 30, 2008
DATE

s/Laura D. Millman
Laura D. Millman
Special Master