

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

**No. 02-208V**

**Filed: August 13, 2012**

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DOROTHY VERDON,  
parent of Robert Verdon,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Respondent.

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

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**DECISION**<sup>1</sup>

**Vowell**, Special Master:

On March 18, 2012, petitioner filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),<sup>2</sup> alleging that her son, Robert Verdon [“Robert”], was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14.

On December 22, 2011, petitioner was ordered to inform the court, by no later than April 30, 2012, whether she wished to continue with her claim or exit the Vaccine Program. If petitioner wanted to proceed, she was ordered to file an amended petition, a response to the pending motion to dismiss, and a list of all of the medical providers who have treated her son Robert. If she desired to exit the Program, she was to file the appropriate dismissal pleading. Petitioner failed to respond to my order.

On May 1, 2012, I noted petitioner’s noncompliance with my prior order and instructed her to comply with it by no later than May 15, 2012. On May 15, 2012

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in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.

<sup>2</sup> 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”).

petitioner's counsel contacted my law clerk, and indicated he required additional time to confer with his client to determine how she wished to proceed.

On May 16, 2012, I ordered petitioner to file, by no later than June 14, 2012, either (1) an amended petition, a response to the pending motion to dismiss, and a list of all of the medical providers who have treated Robert or (2) the appropriate dismissal pleading. Petitioner again failed to respond to my order.

On June 18, 2012, I ordered petitioner to comply with my prior orders or to show cause why this case should not be dismissed for failure to prosecute by no later than July 18, 2012. On July 17, 2012, petitioner filed a motion for extension of time, requesting an additional two weeks to inform the court of her intention to proceed in this case. Petitioner's motion was granted, and her show cause deadline extended to August 1, 2012. To date, petitioner has failed to file a substantive show cause response.

#### 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.<sup>3</sup>

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. 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).<sup>4</sup> Decisions in each of the three "test cases" pertaining to

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<sup>3</sup> 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).

<sup>4</sup> Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

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 either file an amended petition and submit new evidence on causation, or to file a written request to dismiss this case.

## II. Failure to Prosecute

It is petitioner's duty to respond to court orders. As I reminded petitioner in my June 18, 2012 order, 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. *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 Robert suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Robert's vaccinations, or 2) that Robert 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 that petitioner has proven her case by a preponderance of the evidence based upon "the claims of petitioners 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 Robert suffered a "Table Injury." Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Robert's autism spectrum disorder was vaccine-caused.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Robert suffered a "Table Injury" or that Robert'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.**

**IT IS SO ORDERED.**

**/s Denise K. Vowell**  
Denise K. Vowell  
Special Master