

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-0491V

Filed: August 13, 2012

SHARAD CHOPRA and	*	
NIDHI MALHOTRA, parents of	*	UNPUBLISHED
TANISHQ CHOPRA, a minor,	*	
	*	Autism; Failure to Prosecute;
Petitioners,	*	Failure to Follow Court Orders;
	*	Dismissal
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

DECISION¹

On July 8, 2008, petitioners filed a short-form Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),² alleging that Tanishq was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14.

¹ Because this order contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling 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 (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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b).

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.

During the pendency of the case, petitioners' counsel filed medical records, and the case was developed.

On October 12, 2011, petitioners' counsel filed a Motion to Withdraw as Attorney of Record ("Motion to Withdraw"). On June 26, 2012, that motion was granted. In the same order granting counsel's withdrawal request, petitioners were directed to contact chambers by no later than July 26, 2012, to schedule a telephonic status conference. Order at 1, June 26, 2012. The order also advised petitioners that full and timely compliance with all court orders would be required and that failure to file a timely response would lead to the dismissal of petitioners' claim for failure to prosecute. *Id.* at 2. Petitioners failed to respond to that Order.

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.³

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

³ The Theory 1 cases are Cedillo v. Sec'y of Health & Human Servs., No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); Hazlehurst v. Sec'y of Health & Human Servs., No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); Snyder v. Sec'y of Health & Human Servs., No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are Dwyer v. Sec'y of Health & Human Servs., No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); King v. Sec'y of Health & Human Servs., No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); Mead v. Sec'y of Health & Human Servs., No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

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).⁴ 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 petitioners in this case have failed to inform the court how they intend to proceed.

II. Failure to Prosecute

It is petitioners' duty to respond to court orders. Failure to respond to a court order is deemed noncompliance, and noncompliance will not be tolerated. As the undersigned informed petitioners in her June 26, 2012 order, failure to follow court orders shall result in dismissal of petitioners' claim. Tsekouras v. Sec'y of Health & Human Servs., 26 Cl. Ct. 439 (1992), aff'd per curiam, 991 F.2d 810 (Fed. Cir. 1993); Sapharas v. Sec'y, of Health & Human Servs., 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b).

III. Causation In Fact

To receive compensation under the Program, petitioners must prove either 1) that Tanishq suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Tanishq's vaccinations, or 2) that Tanishq 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 petitioners have proven their claim by a preponderance of the evidence based upon "the claims of . . . petitioner[s] alone, unsubstantiated by medical records or by medical opinion." § 13(a). Petitioners have failed to file sufficient medical records and evidence in this case. Thus, an examination of the record has not uncovered any evidence that Tanishq suffered a "Table Injury." Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Tanishq's autism spectrum disorder was vaccine-caused.

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

⁴ Petitioners in Snyder did not appeal the decision of the U.S. Court of Federal Claims.

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Chief Special Master