

Program, National Vaccine Injury Compensation Program² (the Act or the Program). 42 U.S.C. §§ 300aa-1 to -34 (2006).

Petitioner filed this petition on Dymetria's behalf without medical records, affidavits, or other documentation on July 16, 1999. See Petition. Petitioner did not file any medical records for the next two years. On July 31, 2001, petitioner filed a motion seeking authorization to issue a subpoena for the relevant medical records in this case. That motion was granted. See Order, dated Aug. 7, 2001.

By August 31, 2001, petitioner had still not filed any medical records and was ordered by the then-assigned special master to file medical records no later than April 5, 2002, or the case would be dismissed for lack of prosecution. See Order, dated Aug. 31, 2011.

On March 5, 2002, petitioner filed 10 medical record exhibits. Respondent filed a status report on March 28, 2002, stating that respondent had contacted counsel for petitioner requesting additional records, including an amended petition and petitioner's affidavit, in order for the case to be properly evaluated by respondent. See Resp't's Status Report, dated March 28, 2002. Case development then ceased for four years pending efforts to manage groups of hepatitis B claims involving similar injuries as omnibus-type proceedings. Those efforts ultimately were not successful.

The case was reassigned in February of 2006 to the undersigned for further development. Order of Reassignment, dated Feb. 8, 2006. Petitioner continued to gather and file medical records in this case over the next year.

On January 16, 2007, petitioner filed a status report requesting the transfer of her claim to the autism omnibus proceedings. Petitioner's motion was granted. See Notice Regarding "Omnibus Autism Proceeding", dated Jan. 23, 2007.

On February 15, 2008, petitioner was ordered to establish that her case was timely filed and to complete her petition by filing the statutorily required medical records. See Order, dated Feb. 15, 2008.

Petitioner filed, and was granted, several motions for enlargements of time to file the required medical records. On February 9, 2009, respondent filed a Statement Regarding Jurisdiction and Appropriateness of Proceeding with the Omnibus Autism Proceeding, stating that the record supported a finding that the case was filed prior to the

² The National Vaccine Injury Compensation Program is set forth in 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-1 to -34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

expiration of the relevant statutory limitations period and involved a diagnosis of autism spectrum disorder. Respondent also stated that she did not oppose further processing of the case in the Court's Omnibus Autism Proceeding. See Resp't's Statement, dated Feb. 9, 2009, at 1.

Petitioner continued to file medical records over the next two years and filed an amended petition on June 5, 2011, alleging that Dymetria suffered a seizure disorder as a result of receiving a hepatitis B vaccination on November 4, 1996. See Amended Petition at 1-2.

Based on petitioner's representations in the amended petition, the undersigned ordered petitioner to file an expert report that contemplated petitioner's legal burden as articulated in Althen v. Sec'y of Health & Human Servs., 418 F.3d 1274 (Fed. Cir. 2005). See Order dated, Sept. 13, 2011. Petitioner was warned that "the failure to present an opinion that on its face contemplates the three prongs of Althen may require the dismissal of petitioners' claim." Id.

Petitioner sought and received four motions for enlargement of time to file the expert report. When petitioner filed a fifth motion for enlargement of time on July 18, 2012, the undersigned convened a status conference to discuss petitioner's requests. Petitioner acknowledged that no expert had yet been retained. Subsequent to this status conference, the undersigned issued an Order to Show Cause noting that the previous enlargements of time had effectively resulted in a ten-month stay of the proceedings, a time that well exceeded the amount of time that either party was permitted to request a stay under the Vaccine Act. See Order, July 18, 2012. In the Order to Show Cause, the undersigned granted petitioner a final opportunity to provide an expert opinion and ordered that the expert report be filed by August 17, 2012.

At petitioner's request, a status conference was held on August 15, 2012, to discuss petitioner's request for additional time to respond to the Order to Show Cause. Based on petitioner's counsel's representations that he had encountered difficulty in communicating with his client, the undersigned agreed to suspend the deadline established for filing the expert report to allow petitioner time to consult with the local counsel petitioner had hired to facilitate communications, and to identify and retain an expert. Petitioner was ordered to file an expert report or seek dismissal of her claim by October 22, 2012.

On October 22, 2012, petitioner filed a motion for enlargement of time to file the expert report. In support of this motion, counsel for petitioner stated that he erroneously assumed that petitioner and her local counsel were working with the retained expert to furnish the expert report. He requested until November 26, 2012, to file the expert report. Respondent objected to petitioner's motion.

A status conference was held on November 19, 2012, to address petitioner's motion and respondent's objection. After considering the parties' positions, the undersigned granted petitioner's motion with the explicit instruction that petitioner's timely compliance with the filing deadline was imperative. Informing the undersigned's decision was petitioner's success in finally retaining an expert to offer an opinion. Petitioner was ordered to provide an expert report by no later than Monday, November 26, 2012.

On November 26, 2012, counsel for petitioner filed a status report updating the Court on petitioner's progress in filing an expert report in this case. Counsel stated that he had conferred with petitioner's expert, Dr. Suhrbier, regarding the factual aspects of the case and the potential issues with Dr. Suhrbier's opinion. Counsel also stated that Dr. Suhrbier would be consulting with petitioner, Ms. Dixon, regarding his opinion, but counsel advised that the likelihood was that Dr. Suhrbier "[would] not be able to provide a positive opinion." See Pet'r's Status Report, Nov. 26, 2012. Counsel for petitioner requested thirty days to speak with Ms. Dixon and either conclude this case or "provide enough information to Dr. Suhrbier for him to reconsider his position." Id. Petitioner's request was granted and petitioner was ordered to either (1) file an expert report, or (2) move for a decision dismissing this case. Petitioner was advised that "absolutely no further motions for enlargement of time will be considered." Order, dated Nov. 27, 2012.

On December 28, 2012, petitioner filed a motion for enlargement of time to file a dismissal decision. In support of this motion, petitioner's counsel stated that he had been unable to reach petitioner by telephone in order to obtain permission to file the dismissal order and asked for an enlargement of thirty days to file a motion for a dismissal decision. Respondent did not file a response. This decision addresses petitioner's motion.

The undersigned has previously warned petitioner that noncompliance with court's order to produce an expert report or to file a motion for a dismissal decision would not be tolerated and could lead to dismissal of petitioner's claim. See Order, dated Sept. 13, 2011; Order to Show Cause, dated July 18, 2012; Order, dated Nov. 19, 2012; Order, dated Nov. 27, 2012. Further, the undersigned warned petitioner that no additional motions for enlargement of time would be considered. See Order, dated Nov. 27, 2012.

After generous opportunities to do so, petitioner has failed to file an opinion of an expert or medical records sufficient to support petitioner's claim. In addition, petitioner has failed to file a motion for a dismissal decision by the stated deadline, despite previous warnings that additional motions for enlargement of time would not be entertained. **Accordingly, pursuant to Vaccine Rule 21(b), the undersigned dismisses petitioner's claim for insufficient proof and failure to prosecute or comply with the Vaccine Rules, or the court's Orders. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master