

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 04-0665V

Filed: October 9, 2013

Not to be Published

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DOLORES GARZA, parent of, Alexandria Garza, \*  
a minor, \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

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

### DECISION<sup>1</sup>

On April 16, 2004, Petitioner filed a petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),<sup>2</sup> alleging that her daughter, Alexandria, was injured by a vaccine or vaccines listed on the Vaccine Injury Table. *See* § 14.

On April 4, 2012, a copy of my order was sent to Petitioner, granting the motion of Petitioner’s attorney to withdraw. In this Order, I additionally stated that Petitioner would have 60 days to obtain the report of a reliable medical expert stating the opinion that Alexandria suffers from an injury that was caused by one or more specific vaccinations. I reminded Petitioner that she had an obligation to comply with court orders, and that failure to follow courts

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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 Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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”). Hereafter, individual section (“§”) references will be to 42 U.S.C. § 300aa of the Act.

orders would result in dismissal of the claim. Petitioner did not respond to that Order.

On February 12, 2013, I ordered Petitioner to inform the court within 30 days, stating how Petitioner wished to proceed -- that is, to “show cause” why this case should not be dismissed for failure to prosecute.

On February 19, 2013, Petitioner contacted a member of my staff asking what documentation was needed for Petitioner to continue her case. Petitioner was thereafter instructed on how to file documentation with the court.

On February 27, 2013, I issued an Order giving Petitioner 90 days to file:

- Any available medical records detailing, (1) *what* is the disorder from which Alexandria suffers, (2) *which* vaccination(s) were the cause of this disorder (3) *what* were the first symptoms of Alexandria’s disorder, (4) *when* did those first symptoms appear in Alexandria, and (5) exactly *how* the vaccines caused or contributed to Alexandria’s disorder.
- All records not previously provided from Maida Mascorro, Ph.D., and in particular records documenting Alexandria’s evaluation of August 11, 2003, and reported ADHD diagnosis (*see* Pet. Ex. 2 at 2, 4); records related to and documenting Alexandria’s referral to Dr. Mascorro; all records not previously provided from Alejandro D. Judisch, M.D., and in particular, records from Alexandria’s reported evaluation on or around November 20, 2003 (*see id.* at 2); school records dated prior to August 11, 2003 (*see id.* at 5); records from Alexandria’s psychotherapy prior to December 30, 2003 (*see id.*); and a legible copy of the document from Alexandria’s initial visit to neurologist Wilson Sy, M.D. (*see* Pet. Ex. 6-2 at 134.)
- Additionally, any available medical records indicating a diagnosis of Autism Spectrum Disorder (“ASD”), Attention Deficit Hyperactivity Disorder (“ADHD”), or any other disorder from which Alexandria allegedly suffers as a result of vaccination.

On June 5, 2013, I issued an additional Order to Show Cause, ordering Petitioner to again discuss how she wished to proceed with the case. Petitioner was told that by no later than July 5, 2013, Petitioner would need to submit the above-mentioned records enumerated in my Order filed on February 27, 2013. On June 21, 2013, Petitioner filed only the *vaccination* records of Alexandria, detailing the dates on which she received a vaccination and which vaccinations she received.

On July 18, 2013, I issued a Scheduling Order, ordering Petitioner to file additional medical records within 60 days. Petitioner did not respond to that Order. This Order was mailed to Petitioner’s address of record and was returned to the court as undeliverable. The court endeavored to find a new address for Petitioner to no avail.

On August 27, 2013, I issued an Order to Show Cause, ordering Petitioner to file all available medical records within 30 days. Petitioner did not respond to that Order, and that Order was again returned to the court as undeliverable.

## I

### THE OMNIBUS AUTISM PROCEEDING (“OAP”)

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 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.

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<sup>3</sup> The Theory 1 cases are *Cedillo v. HHS*, No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Hazlehurst v. HHS*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Snyder v. HHS*, No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are *Dwyer v. HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *King v. HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. 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.

## II

### CAUSATION IN FACT

To receive compensation under the Program, Petitioner must prove either 1) that Alexandria suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that she suffered an injury that was actually caused by a vaccine. *See* §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). Under the Vaccine Act, a special master cannot find that a petitioner has proven her case by a preponderance of the evidence based upon “the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” § 300aa-13(a) (2006). 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 Alexandria suffered a “Table Injury.” Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Alexandria’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 Alexandria suffered a “Table Injury” or that her injuries were “actually caused” by a vaccination. **This case is dismissed for insufficient proof. The clerk shall enter judgment accordingly.**<sup>5</sup>

**IT IS SO ORDERED.**

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George L. Hastings, Jr.  
Special Master

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<sup>5</sup> This document constitutes my final “Decision” in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). If petitioner wishes to have this case reviewed by a Judge of the United States Court of Federal Claims, a motion for review of this decision must be filed within 30 days. After 30 days the Clerk of this Court shall enter judgment in accord with this decision. If petitioner wishes to preserve whatever right petitioner may have to file a civil suit (that is a law suit in another court) petitioner must file an "election to reject judgment in this case and file a civil action" within 90 days of the filing of the judgment. 42 U.S.C. § 300aa-21(a).