

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-679V

Filed: October 17, 2012

Not to be Published

GEORGE B. PARISI and JAMIE L.E. PARISI *
as Parents and Legal Representatives of *
GEORGE BOSTOCK PARISI, II, a minor, *
*
Petitioners, * Autism; Failure to
* Prosecute; Failure to
* Follow Court Orders;
* Dismissal
*
v. *
*
SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *
*
*
Respondent. *

DECISION¹

On September 20, 2007, petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),² alleging that George was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14.

On September 21, 2010, petitioners were ordered to inform the court, by written

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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

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.

filings, whether they intended to proceed with this case. Petitioners indicated they intended to proceed with the prosecution of this claim on October 19, 2010.

Thereafter, on March 1, 2011 petitioners were ordered to provide the court within 30 days a statement identifying their theory of how they believe vaccines caused their child's injury. Petitioners were further ordered to file within 60 days all available medical records not previously filed. Petitioners did not respond to that order.

On July 20, 2011, petitioners were again ordered to provide the court a statement identifying their theory of causation in this claim, as well as all available medical records or otherwise show cause within thirty days, why this case should not be dismissed for failure to prosecute. The order was sent to petitioners' address of record by certified mail and was returned to the court as undeliverable. The court endeavored to find a new address for petitioners and resent the order to petitioners' address of record and that new address on August 27, 2012.³ The order sent to the petitioners' address of record was again returned to the court as undeliverable. No response was received from the order sent to the newly identified address.

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"⁴ for two theories of causation litigated in the OAP and will not be repeated here.

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

³ The new address located by the court was 10870 Meanderview Ct., Manassas, VA, 20111-4836. The clerk is instructed to **send the instant decision to petitioners' address of record as well as to this new address.**

⁴ 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).

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).⁵ 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.

II. Failure to Prosecute

It is petitioners' duty to respond to court orders. As I reminded petitioners in my August 27, 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 petitioners' 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, petitioners must prove either 1) that George suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of George's vaccinations, or 2) that George 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 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). Petitioners have failed to file sufficient medical records and evidence in this case. An examination of the record does not support a finding that George suffered a "Table Injury." Nor does the record contain any persuasive evidence indicating that George's autism spectrum disorder was vaccine-caused.

On the record in this case, it is clear that petitioners have failed to demonstrate either that George suffered a "Table Injury" or that George's injuries were "actually caused" by a vaccination. **This case is dismissed for insufficient proof and for**

⁵ Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

failure to prosecute. The clerk shall enter judgment accordingly.⁶

IT IS SO ORDERED.

George L. Hastings, Jr.
Special Master

⁶ This document constitutes my final "Decision" in this case, pursuant to § 12(d)(3)(A). If petitioners wish 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 petitioners wish to preserve whatever right petitioners may have to file a civil suit (that is a law suit in another court) petitioners must file an "election to reject judgment in this case and file a civil action" within 90 days of the filing of the judgment. § 21(a).