

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-85V

October 12, 2011

Not to be Published

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DHATA HARRIS,

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Petitioner,

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v.

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Dismissal; statute  
of limitations; Cloer

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SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Dhata Harris, Atlanta, GA, for petitioner (pro se).

Melonie J. McCall, Washington, DC, for respondent.

**MILLMAN, Special Master**

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

On February 8, 2011, petitioner filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-10-34 (2006), alleging that hepatitis

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access.

A and B vaccinations administered on July 12, 2003, caused him gingivitis within one week and that led to multiple sclerosis on May 8, 2004.

The Vaccine Act statute of limitations requires that petitioners file their petitions within 36 months of the “first symptom or manifestation of onset” of their alleged vaccine injury. 42 U.S.C. § 300aa-16(a)(2). In order for petitioner to have filed his petition within the statute of limitations, he should have filed no later than July 18, 2006 for gingivitis or, in the alternative, no later than May 8, 2007 for multiple sclerosis. He filed his petition on February 8, 2011, which is three years (gingivitis) and four years (multiple sclerosis) too late.

The Federal Circuit’s en banc decision in Cloer v. Sec’y of HHS, \_\_\_ F.3d \_\_\_, 2011 WL 3374302 (Fed. Cir. Aug. 5, 2011), held that the statute of limitations begins to run from the date of the first symptom or manifestation of onset of a petitioner’s alleged vaccine reaction. Id. at \*12.

The undersigned issued an Order dated August 26, 2011, explaining the holding of the Federal Circuit in Cloer. On October 12, 2011, the undersigned held a telephonic status conference with petitioner and respondent’s counsel in order to discuss the holding of Cloer and its implication for this case. Petitioner stated he was comfortable in a dismissal of this case, and he would not pursue costs.

The undersigned hereby orders the petition dismissed.

## **DISCUSSION**

The United States is sovereign and no one may sue it without the sovereign's waiver of immunity. United States v. Sherwood, 312 U.S. 584, 586 (1941). When Congress waives sovereign immunity, courts strictly construe that waiver. Library of Congress v. Shaw, 478 U.S. 310 (1986); Edgar v. Sec’y of HHS, 29 Fed. Cl. 339, 345 (1993); McGowan v. Sec’y of HHS, 31

Fed. Cl. 734, 740 (1994); Patton v. Sec'y of HHS, 28 Fed. Cl. 532, 535 (1993); Jessup v. Sec'y of HHS, 26 Cl. Ct. 350, 352-53 (1992) (implied expansion of waiver of sovereign immunity was beyond the authority of the court). A court may not expand on the waiver of sovereign immunity explicitly stated in the statute. Broughton Lumber Co. v. Yeutter, 939 F.2d 1547, 1550 (Fed. Cir. 1991).

The statute of limitations in the Vaccine Act requires vaccinees to sue within 36 months of the onset of their alleged vaccine injury. Once the statute of limitations has run, vaccinees have no more recourse under the Vaccine Act.

### **CONCLUSION**

Petitioner's petition is dismissed. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

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DATE

\_\_\_\_\_  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.