

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

LU MARIE GUZMAN-DIAZ and *
HECTOR ORELLANO-DIAZ, legal *
representatives of a minor child, *
JESHUA ORELLANA-GUZMAN *

No. 09-157V
Special Master Christian J. Moran

Petitioners, *

Filed: April 4, 2011

v. *

Attorneys' fees, jurisdiction

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

UNPUBLISHED DECISION DENYING ATTORNEYS' FEES AND COSTS¹

Ms. Guzman-Diaz and Mr. Orellano-Diaz filed a petition, claiming that various vaccines caused their son, Jeshua, to suffer from autism spectrum disorder. Development of the case was problematic. Petitioners filed some medical records in Spanish and never complied with an order to translate these documents. Respondent claimed not to have received some of the documents that Petitioners did file, although Petitioners' counsel submitted a certificate of service, stating that the documents were served upon respondent. Petitioners did not comply with orders instructing them to serve another copy upon respondent. For a period of time, the petitioners were not communicating with their attorney. Eventually, the case was dismissed for failure to prosecute. Decision, filed June 30, 2010.

¹ Because this published decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it 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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before 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 delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

The petitioners now seek an award of attorneys' fees and costs pursuant to 42 U.S.C. § 300aa—15(e).² A special master may award attorneys' fees and costs only in cases in which the court possesses jurisdiction. This court lacks jurisdiction (and cannot award attorneys' fees and costs) when the petition is not filed within the time provided by the statute of limitations. Brice v. Sec'y of Health & Human Servs., 358 F.3d 859 (Fed. Cir. 2004).

Petitioners bear the burden of establishing jurisdiction for the court to act. Baker v. Sec'y of Health & Human Servs., 61 Fed. Cl. 669, 671 (2004); see also McNutt v. General Motors Acceptance Corp. of Ind., 298 U.S. 178, 189 (1936); Adler Terrace Inc. v. United States, 161 F.3d 1372, 1377 (Fed. Cir. 1998). Here, respondent objects to the motion for attorneys' fees and costs on the ground that petitioners have not established jurisdiction to award attorneys' fees. Petitioners' reply omits any discussion of jurisdiction.

Petitioners have not established that this Court possesses jurisdiction to act. Thus, the motion for attorneys' fees and costs is DENIED.

IT IS SO ORDERED.

Christian J. Moran
Special Master

² Respondent informally communicated that she did not receive petitioners' motion, despite the certificate of service. At the request of the undersigned, the Clerk's Office provided a copy to respondent. It is highly unusual for respondent to claim that she did not receive a document served by petitioners.