

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

No. 03-860V

Filed: May 23, 2012

MAX CROWTHER, a minor by his parent and *
natural guardian, CORINDA CROWTHER, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES *

Respondent *

Autism; Dismissing the Insufficient
Petition; Proof of Causation; Vaccine
Act Entitlement; Denial Without
Hearing

DECISION¹

On April 28, 2003, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² [the “Vaccine Act” or “Program”], on behalf of her child, Max Crowther [“Max”].

On January 17, 2012, I granted petitioner’s former attorney’s motion to withdraw from this case, and ordered petitioner to contact my chambers to schedule a status conference. Petitioner failed to respond to my order, and on February 21, 2012, I issued a show cause order instructing pro se petitioner Corinda Crowther to contact my chambers to schedule a status conference. Petitioner complied, and a status conference was held on March 2, 2012.

On May 9, 2012, I issued a non-compliance order. My order noted that, pursuant to my March 2, 2012 order, petitioner was to have filed updated medical records by May 2, 2012 and set a new filing deadline of May 23, 2012. Petitioner responded to my order on May 16, 2012. She indicated that between her full-time job and caring for Max

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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 National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (1986). Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

and her family she is unable to devote the necessary time required to continue to pursue this case.

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” for two theories of causation litigated in the OAP and will not be repeated here.³

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).⁴ 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. During the March 2, 2012 status conference, petitioner expressed a desire to pursue this case on a new theory connected to Max’s mitochondrial disorder. However, petitioner has failed to submit any evidence in support of this new theory.

II. Causation In Fact

³ 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).

⁴ Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

To receive compensation under the Program, petitioner must prove either 1) that Max suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Max’s vaccinations, or 2) that Max suffered an injury that was actually caused by a vaccine. See §§13(a)(1)(A) and 11(c)(1). Under the Vaccine Act, a special master cannot find that petitioner has proven her case by a preponderance of the evidence based upon “the claims of petitioners alone, unsubstantiated by medical records or by medical opinion.” § 13(a).

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 Max suffered a “Table Injury.” Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Max’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 Max suffered a “Table Injury” or that Max’s injuries were “actually caused” by a vaccination. **This case is dismissed for insufficient proof. The clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

Denise K. Vowell
Special Master