

**In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS**

No. 6-526V

Filed: December 21, 2010

ELIZABETH HATCHER, parent of Michael	*	
Farr Hatcher,	*	
	*	
Petitioner,	*	Failure to Prosecute;
	*	Failure to Provide
	*	Address; Dismissal
v.	*	
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

DECISION¹

VOWELL, Special Master:

On July 18, 2006, petitioner filed a Short-Form Autism Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program [“the Program”],² on behalf of her son, Michael Farr Hatcher. In effect, by use of the special “Short-Form” developed for use in the context of the Omnibus Autism Proceeding, the petition alleges that various vaccinations injured Michael.

On February 13, 2009, petitioner was ordered to file by May 14, 2009, all medical records from the period of the vaccinee’s birth through either, whichever date is later, (1) the date of the petition filing, or (2) the date of the vaccinee’s initial diagnosis of autism, autism spectrum disorder, a speech or language delay related to an autism

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

diagnosis, or any similar neurological disorder related to an autism diagnosis. The order was mailed to petitioner's address of record, 6127 Malloway Court, Cumming, GA 30041, and was returned to the court as undeliverable. Petitioner did not respond to the order.

On September 17, 2010, petitioner was ordered to inform the court whether she intended to proceed with her case. This order was also 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. The court attempted to contact petitioner at her phone number of record, 770-827-5843, and was informed that petitioner had not had that phone number for over two years. Petitioner did not respond to the September 17, 2010 order.

On October 18, 2010, petitioner was ordered to provide the court with a valid address and phone number or otherwise show cause by no later than Wednesday, November 17, 2010, why this case should not be dismissed for failure to prosecute. The order was sent to petitioner's address of record, the only address the court has been able to locate, and it was returned as undeliverable. Petitioner failed to respond to that order as well.

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.

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).

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 (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. The petitioner in this case has failed to inform the court how she intends to proceed.

II. Failure to Prosecute

It is petitioner's duty to ensure the court has a valid address to which it can send filings. Failure to respond to a court order because petitioner has failed to update her address of record is deemed noncompliance with a court order, and noncompliance will not be tolerated. As I reminded petitioner in my October 18, 2010 order, failure to follow court orders, as well as failure to file medical records or an expert medical opinion, shall result in dismissal of petitioner's 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, petitioner must prove either 1) that Michael suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Michael 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." 42 U.S.C. § 300aa-13(a) (2006). Petitioner has failed to file any medical records, and any evidence at all, in this case. Thus, an examination of the record did not uncover any evidence that Michael suffered a "Table Injury." Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Michael's autism spectrum disorder was vaccine-caused.

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

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Michael suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **This case is dismissed for insufficient proof and for failure to prosecute. The clerk shall enter judgment accordingly.**⁵

IT IS SO ORDERED.

Denise K. Vowell
Special Master

⁵ 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).