

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

No. 03-650V

Filed: April 10, 2012

DOLLIE W. SMITH *
Individually and as Next Friend of, *
Miracle Dollie Smith, a minor, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Autism; Failure to Prosecute;
Failure to Follow Court Orders;
Dismissal

DECISION¹

On March 26, 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 Miracle Dollie Smith [“Miracle”].

On January 11, 2012, I granted petitioner’s prior counsel’s motion to withdraw and ordered petitioner to contact my chambers by February 1, 2012, to schedule a status conference. Petitioner, Dollie Smith, complied with my order and a status conference was scheduled for February 23, 2012 at 2pm eastern time.

Unfortunately, at the time of the status conference, there was no answer at the telephone number Ms. Smith had provided, in spite of repeated attempts. Therefore, on February 24, 2012, Ms. Smith was ordered to contact my chambers by March 2, 2012 to

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in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

reschedule the status conference. Petitioner failed to do so.

On March 7, 2012, I issued a show cause order, instructing petitioner to contact my chambers by April 6, 2012 or otherwise show cause why this case should not be dismissed for failure to prosecute. Petitioner failed to respond.

I. Failure to Prosecute

It is petitioner's duty to respond to court orders. As I reminded petitioner in my February 24, 2012 and March 7, 2012 orders, 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).

II. Causation In Fact

To receive compensation under the Program, petitioner must prove either 1) that Miracle suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Miracle's vaccinations, or 2) that Miracle 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 Miracle suffered a "Table Injury." Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Miracle'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 Miracle suffered a "Table Injury" or that Miracle's 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.**

IT IS SO ORDERED.

Denise K. Vowell
Special Master