

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 02-1985V  
Filed: August 24, 2010**

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EDWARD WILLIAM SHANNON,  
parent of Maria K. Shannon,  
an infant,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Dismissal; Failure to Follow Court  
Orders; Failure to Submit  
Supporting Medical Records or  
Expert Opinion; Failure to  
Prosecute

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

**VOWELL**, Special Master:

The above-named petitioner filed a Short-Form Autism Petition for Vaccine Compensation<sup>2</sup> in the National Vaccine Injury Compensation Program<sup>3</sup> on December 27, 2002. Petitioner then filed Phase I records and a Statement of Compliance on August 13, 2009. Respondent filed a Statement Regarding Jurisdiction and Appropriateness of Proceeding within the Court's Omnibus Autism Proceeding ["Res. Statement"] on September 9, 2009. Respondent argued this matter should not proceed

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 Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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

<sup>2</sup> By filing such a petition, petitioner averred that: (1) Maria K. Shannon ["Shannon"] suffered from an autism spectrum disorder ["ASD"], or an autism-like disorder, that had persisted for longer than six months; (2) the petition was filed within three years of onset of that disorder; and (3) a vaccine listed on the Vaccine Injury Table, 42 C.F.R. § 100.3, was the cause of the condition. See Autism General Order #1, Ex. A, *available at* <http://www.uscfc.uscourts.gov/sites/default/files/autism/Autism+General+Order1.pdf> (Fed. Cl. Spec. Mstr. July 3, 2002).

<sup>3</sup> 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).

in the Omnibus Autism Proceeding as “the record does not support a finding that this case involves an autism spectrum disorder.” Res. Statement at 3.

After my own review of the medical records, I agreed that no documentation of an ASD diagnosis had been filed. I ordered petitioner to file any outstanding medical records related to an autism spectrum diagnosis for Maria, as well as the original diagnosis itself or a status report informing the court that Maria has not received an autism spectrum diagnosis, by no later than May 10, 2010. Order filed April 8, 2010.

On May 12, 2010, I granted petitioner’s first motion for an enlargement of time to comply with my order. On June 15, 2010, I granted petitioner’s second motion for an enlargement of time to comply. On July 9, 2010, petitioner’s counsel filed a status report describing his efforts to contact petitioner to obtain the records necessary for compliance as well as petitioner’s failure to respond to these efforts. On July 22, 2010, I ordered petitioner to file the medical records required by my April 8, 2010 order or show cause by no later than Monday, August 23, 2010 why this case should not be dismissed for failure to prosecute. Petitioner’s counsel filed a status report on August 23, 2010 that detailed repeated efforts to contact petitioner and cited certified letter receipts signed by petitioner demonstrating he has received the correspondence. To date, petitioner has not responded to these efforts and has not provided the documentation required in my April 8, 2010 order.

The undersigned warned petitioner that noncompliance with court orders would not be tolerated and could lead to dismissal of petitioner’s claim. See Order filed June 15, 2010; Order filed July 22, 2010. Further, the undersigned warned petitioner in the court’s July 22, 2010 order that “[f]ailure 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.” Order filed July 22, 2010 (citing *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)).

Petitioner has failed to file sufficient medical records or the opinion of an expert to support petitioner’s claim in the instant case. The Vaccine Act provides that a special master cannot find that a petitioner has proven his case by a preponderance of the evidence based upon “the claims of a petitioner alone, unsubstantiated by medical records or medical opinion.” 42 U.S.C. § 300aa-13(a) (2006). Additionally, petitioner has failed to respond to several of the court’s orders in the instant case. Pursuant to Vaccine Rule 21(b), the undersigned dismisses petitioner’s claim for failure to prosecute, failure to comply with the Vaccine Rules, and failure to comply with the court’s orders. The Clerk shall enter judgment accordingly.

**IT IS SO ORDERED.**

**s/Denise K. Vowell**  
**Denise K. Vowell**  
Special Master