

OFFICE OF SPECIAL MASTERS

(Filed: September 13, 2005)

CHRISTOPHER GEORGE WILEY, III,)	
)	
Petitioner,)	
)	
v.)	No. 05-0911V
)	DO NOT PUBLISH
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION¹

On August 19, 2005, Christopher George Wiley, III (Mr. Wiley), submitted a number of documents to the Clerk of the United States Court of Federal Claims.² The Clerk of the United States Court of Federal Claims deemed the documents to constitute a petition for compensation under the National Vaccine Injury Compensation Program (Program).³ Chief Special Master Gary J. Golkiewicz assigned the petition to this special master for the conduct of further proceedings.

This special master reviewed carefully Mr. Wiley's documents. *See Wiley v. Secretary of HHS*, No. 05-0911V, Order of the Special Master (Fed. Cl. Spec. Mstr. Aug. 24, 2005). This special master determined that many of Mr. Wiley's documents, such as documents from the United States District Court for the Middle District of Louisiana related to the dismissal for lack of jurisdiction of

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² In the documents, Mr. Wiley states that he is mentally ill. Indeed, it appears that Mr. Wiley is either a patient or an inmate at the East Feliciana Forensic Facility in Jackson, Louisiana.

³ The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

a social security disability appeal, and documents from the United States Supreme Court related to the denial of a petition for rehearing, are not relevant clearly to a Program claim. Nevertheless, this special master determined that some of Mr. Wiley's documents may be relevant to a Program claim. Mr. Wiley proffered portions of a biopsychosocial integrated clinic summary completed in April 1999. The summary reflects that Mr. Wiley reported "that when he was a young boy, he was given his vaccine in his heart and not his arm, and he did have an allergic reaction and as a result, had to have surgery." In addition, Mr. Wiley proffered portions of the record from a Program action that he filed in August 1999. *See Wiley v. Secretary of HHS*, No. 99-0646V. In August 1999, Mr. Wiley alleged apparently that he had been injured by vaccinations that he received in 1971 and in 1974. *See Wiley v. Secretary of HHS*, No. 99-0646V. Chief Special Master Golkiewicz ruled that he did not possess jurisdiction over the Program action that Mr. Wiley filed in August 1999 because "the case had to be filed no later than February 1, 1991." *See Wiley v. Secretary of HHS*, No. 99-0646V. Therefore, Chief Special Master Golkiewicz dismissed the Program action that Mr. Wiley filed in August 1999. *See Wiley v. Secretary of HHS*, No. 99-0646V.

This special master expressed his grave concern that Mr. Wiley had not presented any relevant information in this current case that is different from information that Mr. Wiley presented in the Program action that he filed in August 1999. *See Wiley v. Secretary of HHS*, No. 05-0911V, Order of the Special Master (Fed. Cl. Spec. Mstr. Aug. 24, 2005). Therefore, this special master stated that, on the current record, he would be constrained to dismiss the petition. However, out of an abundance of caution, this special master directed Mr. Wiley to send a letter to this special master by no later than September 14, 2005. This special master required Mr. Wiley to:

- a. identify his injury;
- b. identify the vaccines that he believes caused his injury;
- c. state the dates on which he received the vaccines that he believes caused his injury; and
- d. state the date on which his injury began.

Mr. Wiley filed his letter on September 8, 2005. Mr. Wiley iterates that he received "a vaccine in [his] heart and not [his] arm." Mr. Wiley represents that "Social Security Doctors" told him in January 2000 that smallpox vaccine and diphtheria-pertussis-tetanus (DPT) vaccine injured him. Mr. Wiley asserts that between 1971 and 1974, he received the vaccines that injured him. Mr. Wiley indicates that he was nine years old when he was injured by vaccines.

The Program represents a waiver of sovereign immunity. *Mass v. Secretary of HHS*, 31 Fed. Cl. 523, 528 (1994). Therefore, the special master must construe strictly Program provisions. *Id.*

The special master must enforce Program provisions even when the result might appear “harsh.” *Greider v. Secretary of HHS*, 23 Cl. Ct. 348, 351 (1991).

Section 300aa-16(a) provides:

In the case of--

(1) a vaccine set forth in the Vaccine Injury Table which is administered before the effective date of this subpart, if a vaccine-related injury or death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury or death after the expiration of 28 months after the effective date of this subpart

The effective date of § 300aa-16(a)(1) was October 1, 1988. *Fuentes v. Secretary of HHS*, No. 92-0162V, 1993 WL 50940, at *2 (Fed. Cl. Spec. Mstr. Feb. 11, 1993). By his own admission, Mr. Wiley received the vaccinations at issue in this case before the effective date of § 300aa-16(a)(1). The expiration of 28 months after the effective date of § 300aa-16(a)(1) occurred on February 1, 1991. Mr. Wiley filed the instant petition on August 19, 2005. The applicable statute of limitations bars clearly Mr. Wiley’s claim. According to the United States Court of Federal Claims, § 300aa-16(a)(1) is a statute of repose. *See Lombardo v. Secretary of HHS*, 34 Fed. Cl. 21 (1995); *Massard v. Secretary of HHS*, 25 Cl. Ct. 421 (1992); *Smith v. Secretary of HHS*, 26 Cl. Ct. 116 (1992). Therefore, the doctrine of equitable tolling does not apply. *See Lombardo v. Secretary of HHS*, 34 Fed. Cl. 21 (1995); *Massard v. Secretary of HHS*, 25 Cl. Ct. 421 (1992); *Smith v. Secretary of HHS*, 26 Cl. Ct. 116 (1992).

In the absence of a motion for review filed under RCFC Appendix B, the Clerk of the United States Court of Federal Claims shall enter judgment dismissing the petition.

The Clerk of the United States Court of Federal Claims shall send Mr. Wiley’s copy of this decision to Mr. Wiley by overnight express delivery.

John F. Edwards
Special Master