

OFFICE OF SPECIAL MASTERS

(Filed: December 13, 2005)

CARRIE RUTH BRAKE,)	
mother and natural guardian of her son,)	
STEPHEN JOSEPH BRAKE,)	
)	
Petitioner,)	
)	
v.)	No. 05-1228V
)	DO NOT PUBLISH
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION¹

On November 17, 2005, Carrie Ruth Brake (Ms. Brake), submitted a letter to the Clerk of the United States Court of Federal Claims. In the letter, Ms. Brake states her belief that her 20-year old son, Stephen Joseph Brake (Stephen), suffered injury from childhood vaccines that he received when he “was either 3- or 6-months” old. Letter, filed November 21, 2005, at 1. The Clerk of the United States Court of Federal Claims deemed the letter to constitute a petition for compensation under the National Vaccine Injury Compensation Program (Program).² Chief Special Master Gary J. Golkiewicz assigned the petition to this special master for the conduct of further proceedings.

On December 12, 2005, this special master conducted a formal status conference. Ms. Brake and respondent’s counsel, Traci Patton, Esq. (Ms. Patton), participated. During the conference, Ms.

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 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.

Brake confirmed that Stephen was born in 1985. Also, during the conference, Ms. Brake confirmed that Stephen received in either 1985 or 1986 the “shots” that Ms. Brake believes injured Stephen. Letter, filed November 21, 2005, at 1.

Section 300aa-16(a)(1) provides that “if a vaccine-related injury or death occurred as a result of the administration of” a Program vaccine “before October 1, 1988,” then “no petition may be filed for compensation” beyond “the expiration of 28 months after October 1, 1988.” According to Ms. Brake, Stephen received his vaccines in 1985 or 1986—long before October 1, 1988. The “expiration of 28 months after October 1, 1988” occurred on February 1, 1991. However, Ms. Brake filed her Program petition on November 17, 2005. This special master is constrained to dismiss Ms. Brake’s claim because the deadline governing Ms. Brake’s claim lapsed on February 1, 1991.

This special master is entirely sympathetic to Ms. Brake’s and Stephen’s obviously tragic circumstances. Yet, on its face, Ms. Brake’s petition is barred by the applicable statute of limitations. This special master possesses no authority to waive the limitation period in § 300aa-16(a)(1). *See, e.g., Widdoss v. Secretary of HHS*, 989 F.2d 1170, 1177-78 (Fed. Cir. 1993). Rather, only Congress has the power to extend the deadline set by § 300aa-16(a)(1). Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing Ms. Brake’s petition.

The clerk of court shall send Ms. Brake’s copy of this decision to Ms. Brake by overnight express delivery.

John F. Edwards
Special Master