

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF THE SPECIAL MASTERS  
No. 03-869V  
Filed: March 12, 2010**

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AMY BECKER, parent of	*
SAMUEL BECKER, a minor,	*
	*
Petitioner,	*
	*
v.	*
	*
SECRETARY OF THE DEPARTMENT OF	*
HEALTH AND HUMAN SERVICES,	*
	*
Respondent.	*
	*

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

**VOWELL**, Special Master:

Petitioner filed a Short-Form Autism Petition For Vaccine Compensation on May 1, 2003.<sup>2</sup> On May 15, 2009, petitioner was ordered to file by August 13, 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 diagnosis, or any similar neurological disorder related to an autism diagnosis. On August 12, 2009, I granted petitioner's motion for an enlargement of time until November 13, 2009, to respond to the May 15, 2009 order. On September 2, 2009, petitioner filed some records responsive to the May 15, 2009 order, but has not filed additional records or the statement of compliance required by the order.

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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 Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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> See Autism General Order #1, dated July 3, 2002, Ex. A, *available at* <http://www.uscfc.uscourts.gov/sites/default/files/autism/Autism+General+Order1.pdf> (Fed. Cl. Spec. Mstr. July 3, 2002). By filing such a petition, the filers averred that: (1) the vaccinee 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.

On May 31, 2009, petitioner's counsel filed a motion to withdraw as attorney of record, and on September 3, 2009, I granted petitioner's counsel's motion to withdraw. On September 9, 2009, I ordered petitioner, Amy Becker, to contact the court within 60 days, and by no later than November 9, 2009, to indicate receipt of the order, update her contact information, and inform the court how she wishes to proceed with this case.

Ms. Becker failed to respond to my September 9, 2009 order. On November 17, 2009, I granted petitioner an additional 30 days, until December 17, 2009, to respond to the September 9, 2009 order. Petitioner was reminded that continued failure to respond to court orders would result in dismissal of her petition. On January 5, 2010, I ordered petitioner to file the medical records required by my May 15, 2009 order or show cause by no later than Thursday, February 4, 2010 why this case should not be dismissed. Petitioner failed to respond to that order as well, and to date she has not filed the rest of the medical records responsive to my May 15, 2009 order.

#### A. Failure to Respond to Court Orders

As I reminded petitioner in orders issued November 17, 2009 and January 5, 2010, noncompliance with court orders will not be tolerated. 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). Petitioner has failed to comply with orders to substantiate her claim and to demonstrate that it was timely filed.

#### B. Limitation of Actions

The medical records filed to date indicate that the claim was not timely filed. In relevant part the Vaccine Act provides:

[In the case of] a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury . . . .

42 U.S.C. § 300aa-16(a)(2) (2006). The Federal Circuit has held that “‘the first symptom or manifestation of onset,’ for purposes of § 300aa-16(a)(2), is the first event objectively recognizable as a sign of a vaccine injury by the medical profession at large.” *Markovich v. Sec'y, HHS*, 477 F.3d 1353, 1360 (Fed. Cir. 2007).

While the filed medical records do not indicate the first symptom or manifestation

of onset of Samuel's condition, they do indicate that he had progressed to diagnosis with an autism spectrum disorder approximately six years before his petition was filed on May 1, 2003. A pediatric neurologist evaluated Samuel Becker in the fall of 1996, and in a letter to a fellow doctor, dated October 3, 1996, he noted that he "suspect[ed] this patient has a pervasive developmental disorder ... [with] some of the features of infantile autism." Pet. Ex. 2, p.1. A pediatrician then conducted a neurodevelopmental evaluation of Samuel on March 27, 1997, and concluded that the "evaluation remains consistent with Sam as having an Autistic Disorder." Pet. Ex. 3, p. 3. It would appear that petitioner's claim is untimely.

This court has no authority to compensate a case unless it is timely filed. Accordingly, petitioner must provide sufficient evidence, through medical records or the statement of a doctor, to establish the "first symptom or manifestation of onset," that is "objectively recognizable as a sign of a vaccine injury by the medical profession at large," in order to demonstrate that petitioner filed the instant case within 36 months following that "first symptom or manifestation of onset." *Markovich*, 477 F.3d at 1360. Without this information, the petition may be dismissed.

Petitioner has failed to file sufficient medical records or the opinion of an expert to establish the timeliness of petitioner's claim in the instant case. Additionally, petitioner has failed to respond to any of the court's orders since the withdrawal of her counsel. Accordingly, 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.**

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**Denise K. Vowell**  
Special Master