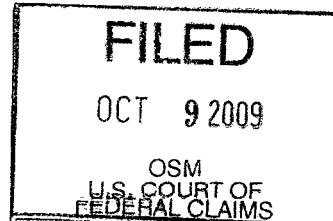


ORIGINAL

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: October 9, 2009



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IN RE: CLAIMS FOR VACCINE INJURIES \*
RESULTING IN AUTISM SPECTRUM \*
DISORDER OR A SIMILAR \*
NEURODEVELOPMENTAL DISORDER \*

AUTISM MASTER FILE<sup>1</sup>

VARIOUS PETITIONERS,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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AUTISM UPDATE-OCTOBER 9, 2009

This Update describes a number of recent developments in the Omnibus Autism Proceeding ("OAP") that have occurred since the last Autism Update, issued on April 23, 2009. Since that last Update, we have held unrecorded telephonic status conferences in the OAP on May 7, June 22, July 22, and September 16, 2009. Further, an important development in the OAP during that period was the judicial affirmance of the decisions in the first three "autism test cases," as will be detailed below.

<sup>1</sup>The Autism Master File constitutes the record of the Omnibus Autism Proceeding. The complete File is maintained by the Clerk of this court, and is available for inspection by the parties. An electronic version of the File is maintained on this court's website. This electronic version contains a complete list of all documents in the File, along with the full contents of most of those documents; the exception is that the content of some documents has been withheld from the website due to copyright considerations or due to 42 U.S.C. § 300aa-12(d)(4)(A). To access this electronic version of the Autism Master File, visit this court's website at www.uscfc.uscourts.gov. From the court's "Home" page, click on the "Vaccine Info" page, then on the "Autism Proceeding" page, then on the "Docket of Omnibus Autism Proceeding" page.

***A. Proceedings in the “test cases” concerning petitioners’ first theory of general causation***

As explained in previous Autism Updates, the Petitioners’ Steering Committee (PSC) originally stated its desire to present three different theories of “general causation” in the Omnibus Autism Proceeding, but later pared that to *two* different theories. The PSC designated three “test cases” for each of those two theories. Accordingly, during 2007 we conducted hearings in three “test cases” with respect to the PSC’s *first* “general causation” theory, *i.e.*, the theory that MMR vaccines and thimerosal-containing vaccines can combine to cause autism. On February 12, 2009, each of three special masters issued a decision in the test case assigned to that special master. Special Master Campbell-Smith issued the decision in *Hazlehurst v. Secretary of HHS*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). Special Master Vowell issued the decision in *Snyder v. Secretary of HHS*, 01-162V, 200 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). Special Master Hastings issued the decision in *Cedillo v. Secretary of HHS*, 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009).

During recent weeks, each of those three “test case” decisions was affirmed, in separate rulings by three different judges of this court. On July 24, Judge Wiese affirmed the *Hazlehurst* decision. See 2009 WL 2371336. On August 6, Judge Wheeler affirmed the *Cedillo* decision. See 2009 WL 2998429. On August 11, 2009, Judge Sweeney affirmed the *Snyder* decision. See 2009 WL 2569773.

On September 22, 2009, the petitioners in the *Hazlehurst* case filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit. The time period for filing similar notices in *Cedillo* and *Snyder* have not yet expired.

***B. Post-hearing proceedings concerning the petitioners’ second theory of general causation***

The PSC’s *second* causation theory is that thimerosal-containing vaccines alone can cause autism. As to that theory, we conducted an evidentiary hearing on May 12 through May 30, 2008. At that evidentiary hearing, the PSC and respondent presented testimony concerning both that “general causation issue” and *also* the “specific causation” issue in two of the particular “test cases” for that theory selected by the PSC, which are the cases of *King v. Secretary of HHS*, No. 03-584V, and *Mead v. Secretary of HHS*, No. 03-215V. Then, specific causation evidence was presented concerning the third test case, *Dwyer v. Secretary of HHS*, No. 03-1202V on July 21-22, 2008. (Special Master Hastings will decide the specific causation issue in the *King* case, Special Master Campbell-Smith will decide the specific causation issue in the *Mead* case, and Special Master Vowell will decide the specific causation issue in the *Dwyer* case.)

The parties have completed the process of preparing written briefs analyzing the evidence in each of those three cases. Accordingly, in each of the three cases the assigned special master is

engaged in the process of analyzing the briefs and studying the evidentiary record. Each master will issue a ruling as soon as possible.

### ***C. Ongoing process of record-filing in autism cases***

As described in previous Autism Updates (*e.g.*, April 23, 2008), the Office of Special Masters has since January of 2008 been engaged in a process of prompting the autism petitioners with pending cases to file the relevant medical records. That process is continuing. That process has resulted in controversies in a large number of cases concerning whether the petition was timely filed, with the respondent filing dismissal motions on timeliness grounds. A number of such motions remain pending. We hereby notify the parties that, while efforts to resolve such motions are being made by not only the undersigned three but by all eight special masters, due to the large number of such pending motions, in some cases it may be some time before a special master is able to address the motion. In particular, the three undersigned special masters will continue to give priority to completing our “entitlement” rulings in the three pending “second theory” test cases, described above. Once those entitlement rulings are filed, the undersigned will be able to devote attention to the pending dismissal motions.

We also note that, as a result of the court’s above-described orders to file medical records, and the ensuing challenges by respondent concerning timely filing in many cases, the court has taken action in a considerable number of cases. Some cases have been dismissed at the request of petitioners themselves, and some cases have been dismissed by a special master as untimely filed. In other cases, once it is determined that such cases were timely filed, such cases are placed in abeyance in order to await the final results of the six “first theory” and “second theory” autism test cases described above.


Specifically, over the last two years approximately 32 cases have been dismissed as untimely filed. About 110 petitioners have voluntarily filed stipulations for dismissal of their cases, and been granted dismissals. And in about 165 more cases petitioners have requested “rulings on the record,” resulting in dismissal of their cases, since they supplied no evidence of causation.

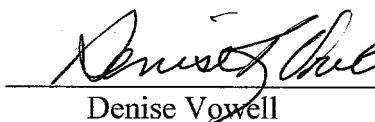
Petitioners and petitioners’ counsel are reminded that documents containing information concerning “how to exit the Program” were posted on this court’s on-line version of the Autism Master File – see footnote 1 above – on October 8, 2009. Petitioners or petitioners’ counsel interested in that topic should carefully consult that material. Thereafter, if any questions remain, petitioners or counsel may contact our staff attorney, Jocelyn McIntosh, at 202-357-6344.

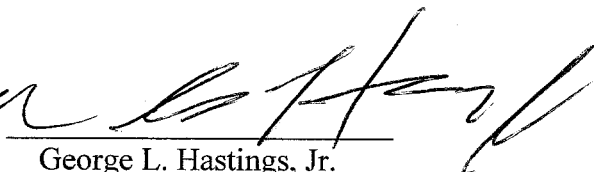
### ***D. Further proceedings***

We continue to meet regularly with the representatives of both the PSC and respondent, to discuss any ongoing issues concerning the Omnibus Autism Proceeding. We will continue to issue these Autism Updates describing that process. In addition, those interested in following the course

of events, in between these Updates, should continue to check our Autism Proceeding webpage. The next status conference in the Omnibus Autism Proceeding is scheduled for November 4, 2009.

  
Patricia Campbell-Smith  
Special Master

  
Denise Vowell  
Special Master

  
George L. Hastings, Jr.  
Special Master