

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: May 14, 2007)  
(Reissued with redactions: June 12, 2007)

DO NOT PUBLISH

JANE DOE/02,	)	
natural mother of and guardian ad litem for her son,	)	
JOHN DOE/02,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. [REDACTED]V
	)	Decision on the Record;
SECRETARY OF	)	Dismissal
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

DECISION<sup>1</sup>

Petitioner, Jane Doe/02 (Ms. Doe/02), as guardian ad litem for her son, John Doe/02 (Doe/02), seeks compensation under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> Ms. Doe/02 filed an initial Program petition on February 6, 2006. *See* Petition (Pet.). Ms. Doe/02 alleged that “[o]n February 14, 2003, [Doe/02] sustained an encephalopathy.” Pet. ¶ 3. Ms. Doe/02 attributed Doe/02’s putative encephalopathy to a diphtheria-tetanus-acellular pertussis (DTaP) vaccination that Doe/02 received on January 15, 2003. *Id.*

Ms. Doe/02 did not proffer with the petition any of the documents required by § 300aa-11(c)(1) & (2) and by Vaccine Rule 2(e). Therefore, the special master monitored the development of the documentary record. *See, e.g., Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of

<sup>1</sup> 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.

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the Special Master (Fed. Cl. Spec. Mstr. Feb. 8, 2006); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Mar. 2, 2006); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Apr. 5, 2006); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. May 12, 2006); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. June 14, 2006); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. July 13, 2006); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Aug. 11, 2006); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Sept. 6, 2006); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Oct. 12, 2006). By October 30, 2006, Ms. Doe/02 had proffered the majority of Doe/02's relevant medical, educational and therapy records. *See, e.g.*, Petitioner's Third Submission of Required Documents (Third Submission), filed October 30, 2006; Petitioner's Fourth Submission of Required Documents (Fourth Submission), filed October 30, 2006.

On November 9, 2006, Ms. Doe/02 amended her petition. *See* Amended Petition (Am. Pet.). Ms. Doe/02 altered significantly her original allegations. Ms. Doe/02 asserted that Doe/02 experienced the onset of an encephalopathy, or the aggravation of an encephalopathy, on February 12, 2003. Am. Pet. at 1; ¶ 5. Ms. Doe/02 related Doe/02's condition to a DTaP vaccination and "three (3) other vaccines" that Doe/02 received on November 2, 2002, as well as "subsequent vaccines throughout 2003." Am. Pet. at 1.

The special master convened an informal, yet substantive, status conference on December 1, 2006. He reviewed primarily Ms. Doe/02's amended petition. He expressed his firm view that given the obvious complexity of the medical records in the case, the amended petition did not contain an adequate statement of factual contentions or a clear statement of medical contentions. Therefore, the special master directed Ms. Doe/02 to pursue immediately a medical expert's assistance in identifying expeditiously the basis for any Program claim. *See Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Dec. 4, 2006); *see also Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Jan. 25, 2007); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Mar. 12, 2007); *Doe/02 v. Secretary of HHS*, No. [REDACTED]V, Order of the Special Master (Fed. Cl. Spec. Mstr. Mar. 27, 2007).

Ms. Doe/02 has completed now the medical investigation of her case. *See, e.g.*, Motion for Judgment on the Record (Motion), filed May 9, 2007. According to Ms. Doe/02, she "cannot find a credible expert to support" her claim. Motion ¶ 5. As a consequence, Ms. Doe/02 seeks judgment on the record. *See generally* Motion.

Congress prohibited special masters from awarding compensation "based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." § 300aa-13(a). Numerous cases construe § 300aa-13(a). The cases reason uniformly that "special masters are not medical doctors, and, therefore, cannot make medical conclusions or opinions based upon facts

alone.” *Raley v. Secretary of HHS*, No. 91-0732V, 1998 WL 681467, at \*9 (Fed. Cl. Spec. Mstr. Aug. 31, 1998); *see also Camery v. Secretary of HHS*, 42 Fed. Cl. 381, 389 (1998).

The special master has canvassed thoroughly the record as a whole. He determines that Doe/02’s medical records alone do not establish more likely than not that Doe/02 suffered a vaccine-related injury. And, as Ms. Doe/02 concedes, the special master determines that Ms. Doe/02 has not presented a reliable medical opinion demonstrating that Doe/02 suffered a vaccine-related injury. *See* Motion ¶5. Thus, in *granting* Ms. Doe/02’s Motion, the special master is constrained to conclude that Ms. Doe/02 is not entitled to Program compensation.

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing the petition.

The clerk of court shall send Ms. Doe/02’s copy of this decision to Ms. Doe/02 by overnight express delivery.

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John F. Edwards  
Special Master