

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-727V

Filed: August 16, 2013

Not to be Published

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HELMI ELHADIDI and KATHERINE J. \*

WALKER, natural parents and guardians of, \*

Adam H. Elhadidi, a minor, \*

Petitioners, \*

v. \*

SECRETARY OF HEALTH AND \*

HUMAN SERVICES, \*

Respondent. \*

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Autism; Failure to Prosecute;  
Failure to Follow Court Orders;  
Dismissal.

### DECISION<sup>1</sup>

On October 15, 2007, Petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”), alleging that their son, Adam, was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14.

On September 5, 2012, a copy of my order was sent to Petitioners, granting the motion of Petitioners’ attorney to withdraw. In this Order, I additionally stated that you would have 60 days to obtain the report of a reliable medical expert stating the opinion that Adam suffers from an injury that was caused by one or more specific vaccinations. I reminded you that you have an obligation to comply with court orders. Failure to follow court orders would result in dismissal of your claim.

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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 Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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.

On October 1, 2012, Petitioners filed a “Response To Order To Show Cause,” providing a detailed account of what Adam experienced following vaccination. This Response also contained a Vaccine Administration Record, and a letter from AETNA insurance company, which included a report consisting of medical, dental, and pharmacy claim and related data. You did not file the report of a reliable medical expert with this response.

On June 14, 2013, I ordered Petitioners to inform the court within thirty days how you wished to proceed or *show cause*, why this case should not be dismissed for failure to prosecute.<sup>2</sup> This order was mailed to your address of record and was returned to the court as undeliverable. The court endeavored to find a new address for Petitioners and identified additional addresses.<sup>3</sup>

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<sup>2</sup> You must file your response by sending **the original document and one copy** to:

Clerk  
U.S. Court of Federal Claims  
717 Madison Place, N.W.  
Washington, DC 20005

You must also send a copy to respondent’s attorney at the following address:

U.S. Department of Justice  
Vaccine Litigation  
Torts Branch/Civil Division  
P.O. Box 146  
Ben Franklin Station  
Washington, D.C. 20044-0146

A signed **Certificate of Service** shall be attached to all copies and the original showing the date the items were served or sent, to whom the items were sent, and by what manner the items were sent (i.e., US Mail, FEDEX). See Vaccine Rule 17(b), RCFC Rule 5.

Please see [Guidelines for Practice Under the National Vaccine Injury Compensation Program](http://www.uscfc.uscourts.gov/OSMPage.htm), which can found at <http://www.uscfc.uscourts.gov/vaccine-programoffice-special-masters> or requested from the court, for further information on how documents should be submitted.

<sup>3</sup> The new addresses located by the court were 5125 Heritage Lane Alexandria, VA 22311 -1324; 5505 Seminary Road, Unit 1604, Falls Church, VA 22041-3500; and 5505 Seminary Road, Unit 905, Falls Church, VA 22041-3500. **The clerk is instructed to send the instant order to Petitioners' address of record, as well as to each of the new addresses, by certified mail.**

On July 31, 2013, Petitioners were again ordered to inform the court whether they intended to proceed with this case or otherwise show cause within thirty days, why this case should not be dismissed for failure to prosecute. Petitioners were ordered to provide the court with a valid address and phone number. The Order was sent to Petitioners' address of record by certified mail and additional addresses listed above. The Order was again returned to the court as undeliverable.

## I

### THE OMNIBUS AUTISM PROCEEDING

This case is one of more than 5,400 cases filed under the Program in which petitioners alleged that conditions known as “autism” or “autism spectrum disorders” [“ASD”] were caused by one or more vaccinations. A detailed history of the controversy regarding vaccines and autism, along with a history of the development of the OAP, was set forth in the six entitlement decisions issued by three special masters as “test cases” for two theories of causation litigated in the OAP and will not be repeated here.<sup>4</sup>

Ultimately, the Petitioners' Steering Committee [“PSC”], an organization formed by attorneys representing petitioners in the OAP, litigated six test cases presenting two different theories on the causation of ASDs. The first theory alleged that the measles portion of the measles, mumps, and rubella vaccine could cause ASDs. That theory was presented in three separate Program test cases during several weeks of trial in 2007. The second theory alleged that the mercury contained in thimerosal-containing vaccines could directly affect an infant's brain, thereby substantially contributing to the causation of ASD. That theory was presented in three additional test cases during several weeks of trial in 2008.

Decisions in each of the three test cases pertaining to the PSC's first theory rejected the petitioners' causation theories. *Cedillo*, 2009 WL 331968, *aff'd*, 89 Fed. Cl. 158 (2009), *aff'd*, 617 F.3d 1328 (Fed. Cir. 2010); *Hazlehurst*, 2009 WL 332306, *aff'd*, 88 Fed. Cl. 473 (2009), *aff'd*, 604 F.3d 1343 (Fed. Cir. 2010); *Snyder*, 2009 WL 332044, *aff'd*, 88 Fed. Cl. 706 (2009).<sup>5</sup> Decisions in each of the three “test cases” pertaining to the PSC's second theory also rejected the petitioners' causation theories, and petitioners

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<sup>4</sup> The Theory 1 cases are *Cedillo v. HHS*, No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Hazlehurst v. HHS*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); *Snyder v. HHS*, No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are *Dwyer v. HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *King v. HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. HHS*, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

<sup>5</sup> Petitioners in *Snyder* did not appeal the decision of the U.S. Court of Federal Claims.

in each of the three cases chose not to appeal. *Dwyer*, 2010 WL 892250; *King*, 2010 WL 892296; *Mead*, 2010 WL 892248. Thus, the proceedings in these six test cases are concluded. Petitioners remaining in the OAP must now decide whether to pursue their cases, and submit new evidence on causation, or take other action to exit the Program. The Petitioners in this case have failed to inform the court how they intend to proceed.

## II

### FAILURE TO PROSECUTE

It is Petitioners' duty to ensure the court has a valid address to which it can send filings. Failure to respond to a court order because Petitioners have failed to update their address of record is deemed noncompliance with a court order, and noncompliance will not be tolerated. As I reminded Petitioners in my Orders, dated June 14, 2013, and July 31, 2013, failure to follow court orders, as well as failure to file medical records or an expert medical opinion, shall result in dismissal of Petitioners' 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).

## III

### CAUSATION IN FACT

To receive compensation under the Program, Petitioners must prove either 1) that their son, Adam, suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Adam suffered an injury that was actually caused by a vaccine. *See* §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). Under the Vaccine Act, a special master cannot find a petitioner has proven her case by a preponderance of the evidence based upon "the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." § 300aa-13(a) (2006). Petitioners have failed to file sufficient medical records and evidence in this case. Thus, an examination of the record did not uncover any evidence that Petitioners' son Adam suffered a "Table Injury." Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Adam's autism spectrum disorder was vaccine-caused.

Accordingly, it is clear from the record in this case that Petitioners have failed to demonstrate either that Adam suffered a "Table Injury" or that his injuries were "actually caused" by a vaccination. **This case is dismissed for insufficient proof and for failure to prosecute. The clerk shall enter judgment accordingly.**<sup>6</sup>

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<sup>6</sup> This document constitutes my final "Decision" in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). If petitioner wishes to have this case reviewed by a Judge of the United States Court of Federal Claims, a motion for review of this decision must be filed within 30 days. After 30 days the Clerk of this Court shall enter judgment in accord with this decision. If petitioner wishes to preserve whatever right petitioner may have to

**The clerk of the court shall forward a copy of this Order to Petitioners by certified mail, return receipt requested.**

Any questions regarding this Order may be directed to my law clerk, Danielle Sgro at (202) 357-6384.

**IT IS SO ORDERED.**

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George L. Hastings, Jr.  
Special Master

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file a civil suit (that is a law suit in another court) petitioner must file an "election to reject judgment in this case and file a civil action" within 90 days of the filing of the judgment. 42 U.S.C. § 300aa-21(a).