

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-0937V

Filed: February 20, 2009

Not To Be Published

RACHEL TALTY as legal representative of SAMUEL TALTY, a minor,

Petitioner(s),

v.

SECRETARY OF HEALTH AND HUMAN SERVICES

Respondent.

* * * * *

Autism; Statute of Limitations; Untimely Filing

DECISION¹

On June 1, 2004 petitioners filed a Short-Form Autism Petition For Vaccine Compensation the National Vaccine Injury Compensation Program (“the Program”).² On October 15, 2008 the undersigned issued an Order requiring petitioners to file certain medical records to establish that the petition for compensation was filed within three years of “the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury,” § 16(a)(2), as well as to complete the petition by filing the statutorily required medical records. § 11(c)(2).

¹Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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.

²The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. §§ 300aa-10 et seq. (West 1991 & Supp. 2002) (“Vaccine Act” or the “Act”). Hereinafter, individual section references will be to 42 U.S.C.A. § 300aa of the Vaccine Act.

Petitioner filed a Notice to Court on February 2, 2009 to “advise” the Court that Samuel “more than three years prior to the filing of this case was exhibiting, many developmental delays and behaviors consistent with autism. While he was not formally diagnosed with autism until after 2001, petitioner admits that Samuel was exhibiting symptoms consistent with autism and/or PDD prior to June 2001.” Notice to Court filed February 2, 2009.

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

§ 16(a)(2). Petitioners concede their petition was filed more than 36 months prior after the first symptom of Samuel’s alleged injury. Accordingly, the undersigned finds that petitioners’ claim must be dismissed as petitioners have not proven by a preponderance of the evidence that the petition was filed within “36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury” as required by § 16(a)(2) of the Vaccine Act. Petitioners’ claim is dismissed. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

George L. Hastings
Special Master