ORIGINAL

FILED
SEP 09 2003
U.S. COURT OF FEDERAL CLAIMS

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: September 9, 2003)

* *

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

VARIOUS PETITIONERS,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

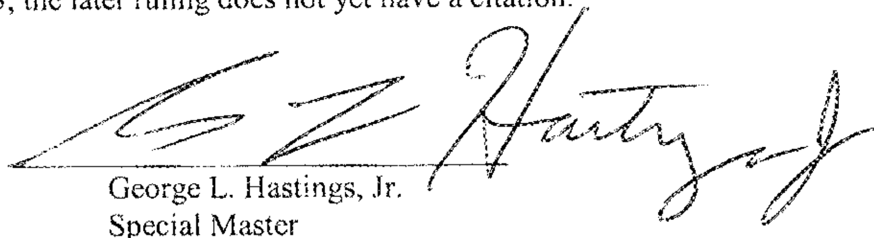
Respondent.

* *

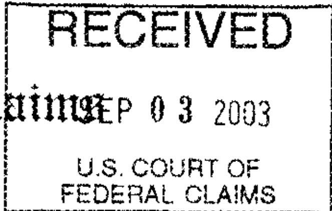
AUTISM MASTER FILE

ORDER

I have issued two published rulings in the case of *Stewart v. Secretary of HHS*, No. 02-819V, which are of general importance to the Omnibus Autism Proceeding. Accordingly, I hereby attach those rulings to this Order, in order to place those rulings directly into the record of the Omnibus Autism Proceeding. I also note that the earlier ruling is electronically "published" at 2002 WL 31965743 and 2002 U.S. Claims LEXIS 363; the later ruling does not yet have a citation.



George L. Hastings, Jr.
Special Master


RECEIVED
SEP 03 2003
U.S. COURT OF
FEDERAL CLAIMS

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 02-819V
(Filed: September 3, 2003)

KIM STEWART, Parent of Heath Stewart, a Minor, Petitioner, v. SECRETARY OF HEALTH AND HUMAN SERVICES, Respondent.	*	**TO BE PUBLISHED**

Ronald Homer, Boston, Massachusetts, for petitioner.
Vincent Matanoski, Department of Justice, Washington, D.C., for respondent.

RULING DENYING RESPONDENT'S "MOTION FOR APPROPRIATE RELIEF"

HASTINGS, Special Master

This is an action in which the petitioner seeks an award under the National Vaccine Injury Compensation Program (hereinafter "the Program").[1] Respondent has filed a motion entitled "Motion For Appropriate Relief." For reasons to be stated below, I hereby deny that motion.

I

THE AUTISM CASES AND THE "OMNIBUS AUTISM PROCEEDING"

The respondent's motion in this case arises in the context of an unusual situation involving multiple cases filed under the Program that share a common issue of medical causation. Each of

[1] The applicable statutory provisions defining the Program are found at 42 U.S.C.§ 300aa-10 *et seq.* (2000 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2000 ed.). I also note that I will sometimes refer to the statute that enacted the Program as the "Vaccine Act."

these cases involves an individual who suffers from a neurodevelopmental disorder known as "autism spectrum disorder"--"autism" for short--or a similar neurodevelopmental disorder. In each case, it is alleged that such disorder was causally related to one or more vaccinations received by that individual--*i.e.*, it is alleged that the disorder was caused by measles-mumps-rubella ("MMR") vaccinations; by the "thimerosal" ingredient contained in certain diphtheria-tetanus-pertussis ("DTP"), diphtheria-tetanus-acellar pertussis ("DTaP"), hepatitis type B, and hemophilus influenza type B ("HIB") vaccinations; or by some combination of the two. To date, approximately 3,100 such cases have been filed with this court, and more such filings (perhaps several thousand) are anticipated.

To deal with this large group of cases involving a common factual issue--*i.e.*, whether these types of vaccinations can cause autism--during the early summer of 2002 the Office of Special Masters (OSM) conducted a number of informal meetings with attorneys who represent many of the autism petitioners and with counsel for the Secretary of Health and Human Services, who is the respondent in each of these cases. At these meetings the petitioners' representatives proposed a special procedure by which the OSM could process the autism claims as a group. They proposed that the OSM utilize a two-step procedure: first, conduct an inquiry into the *general causation issue* involved in these cases-- *i.e.*, whether the vaccinations in question can cause autism and/or similar disorders, and if so in what circumstances-- and then, second, apply the outcome of that general inquiry to the individual cases. They proposed that a team of petitioners' lawyers be selected to represent the interests of the autism petitioners during the course of the general causation inquiry. They proposed that the proceeding begin with a lengthy period of discovery concerning the general causation issue, followed by a designation of experts for each side, an evidentiary hearing, and finally a ruling on the general causation issue by a special master. Then, the general causation conclusions, reached as a result of the general proceeding, would be applied to the individual cases.

As a result of the meetings discussed above, the OSM adopted a procedure generally following the format proposed by the petitioners' counsel. On July 3, 2002, the Chief Special Master, acting on behalf of the OSM, issued a document entitled the *Autism General Order #1*.[2] That General Order sets up a proceeding known as the Omnibus Autism Proceeding (hereinafter sometimes "the Proceeding"). In that Proceeding, a group of counsel selected from attorneys representing petitioners in the autism cases are in the process of obtaining and presenting evidence concerning the *general issue* of whether these vaccines can cause autism, and, if so, in what circumstances. The results of that general inquiry will then be applied to the individual cases. (2002 WL 31696785 at *3.)

The *Autism General Order #1* assigned the responsibility for presiding over the Omnibus

---

[2]The *Autism General Order #1* is published at 2002 WL 31696785 (Fed. Cl. Spec. Mstr. July 3, 2002). I also note that the documents filed in the Omnibus Autism Proceeding are contained in a special file kept by the Clerk of this court, known as the "Master Autism File." That file may be viewed at the Clerk's office, or viewed on this court's Internet website at www.uscfc.uscourts.gov/osm/osmautism.htm.

Autism Proceeding to the undersigned special master. In addition, I have also been assigned responsibility for all of the individual Program petitions in which it is alleged that an individual suffered autism or an autistic-like disorder as a result of MMR vaccines and/or thimerosal-containing vaccines. The individual petitioners in the vast majority of those cases have requested that, in general, no proceedings with respect to the *individual* petitioners will be conducted until after the conclusion of the Omnibus Autism Proceeding with respect to the *general* causation issue.[3] The OSM will then deal specifically with the individual cases.

II

USE OF THE "SHORT-FORM" AUTISM PETITIONS, AND RESPONDENT'S MOTION TO DISMISS THIS PETITION

As noted in the *Autism General Order #1* (2002 WL 31696785 at *2), during the meetings of the informal advisory group, the respondent's representatives did not oppose the petitioners' general plan, as set forth above, that the OSM first conduct a general inquiry into the causation question, then apply the conclusions reached in that inquiry to the individual cases. A difference of opinion did emerge, however, on one important procedural point, a difference which is relevant to the motion at issue here.

The petitioners' representatives proposed that would-be petitioners who wish to elect into the Omnibus Autism Proceeding be permitted to file their Program petitions by filing very simple short-form "opt-in" petitions. Each such short-form petition, it was proposed, would consist basically of a petition form containing the names of the injured vaccinee and that vaccinee's parents or other representatives, and an agreement to opt into the Omnibus Autism Proceeding. By using the short-form petition, each petitioner would automatically be asserting that the vaccinee had suffered autism or a similar disorder as a result of MMR vaccinations and/or thimerosal-containing vaccinations. The short-form petition would not contain a detailed account of the relevant vaccinations and the history of the vaccinee's disorder, nor would it be accompanied by the medical records of the vaccinee's injury. Respondent's representatives indicated that they could not agree to this part of the petitioners' proposal, which would allow the filing of a "short-form" petition unaccompanied by medical records. They pointed to the statutory provisions calling for a Program petition to set forth a detailed account of the injury alleged, and contended that a petition must be filed along with all relevant medical records. *See* § 300aa-11(c).

The OSM noted this concern of respondent in the *Autism General Order #1* (2000 WL 31696785 at *6, fn.4), and then analyzed the concern in detail in a document filed on July 8, 2002, entitled *Discussion of Issue of Short-Form Petitions* (hereinafter "*Discussion*"). Like the *Autism*

---

[3]I note that it is up to each individual petitioner to determine whether to defer proceedings concerning his own case pending the completion of the Omnibus Autism Proceeding. If an individual petitioner has proof of causation in his own case that he wishes to put before a special master at any time, that petitioner will be allowed to do so.

General Order #1, this *Discussion* document was filed by the Chief Special Master on behalf of the OSM. The Chief Special Master acknowledged that the respondent was raising serious and important concerns, but, considering all the circumstances, concluded that it was appropriate to permit use of the short-form petitions. (*Discussion* at 2-4.)

After publication of the *Autism General Order #1*, many petitioners began to file short-form petitions as a way of simultaneously filing their Program petitions and indicating their agreement to stay proceedings in their own individual cases pending the completion of the Omnibus Autism Proceeding. As of late August 2003, more than 2,500 short-form petitions or very similar petitions[4] had been filed. The petitioner in this case, Kim Stewart, filed a short-form petition on July 18, 2002. No medical records were filed with the petition, although petitioner's counsel also filed a "Motion for Issuance of Subpoena," requesting permission to utilize court subpoenas to obtain medical records pertaining to the autistic condition of petitioner's son, Heath Stewart. I issued an Order in this case on August 7, 2002, granting the subpoena request and confirming that, at petitioner's request, I would not conduct any case-specific proceedings in this case (unless requested by a party) until the completion of the Omnibus Autism Proceeding.

Subsequently, the respondent filed a "Motion to Dismiss" (hereinafter "Motion"), asserting that this petition should be dismissed because it was not accompanied by medical records or affidavits describing Heath Stewart's condition. Petitioner's counsel opposed that motion, and I denied it in an order filed on December 30, 2002. *Stewart v. Secretary of HHS*, No. 02-819V, 2002 WL 319695743 (Fed. Cl. Spec. Mstr. Dec. 30, 2002) (hereinafter "*Stewart I*"). I will summarize respondent's argument in favor of dismissal, and my reasons for denying the motion, in the following paragraphs.

Respondent based his motion chiefly upon those portions of the Vaccine Act which state that certain documents are to be filed with a Program petition. The Vaccine Act states that a petition "shall contain * * * an affidavit, and supporting documentation, demonstrating that" the petitioner qualifies for an award under the Program. § 300aa-11(c)(1). The Act further states that certain types of medical records, such as prenatal, vaccination, and physician records, shall accompany the petition. § 300aa-11(c)(2). Based on these provisions, respondent argued that any petition that is not accompanied at the time of filing by all the documents mentioned in § 300aa-11(c)(1) and (2) must therefore automatically be dismissed, for failure to comply with the statute. I rejected respondent's argument as unpersuasive.

I acknowledged first that, as respondent pointed out, § 300aa-11(c) of the statute contemplates that, ideally, a Program petition will set forth all details of the vaccinee's injury, and

---

[4]Most of the autism petitions filed since the *Autism General Order # 1* have been filed using the "short-form" format as set forth in the *Autism General Order #1*, Ex. B; no medical records were filed with most of those petitions. In addition, one law firm has filed hundreds of petitions that are only slightly more detailed than the short-form version; those petitions also were filed without medical records.

be accompanied by all relevant medical records. As respondent noted, the instruction that a petitioner file a detailed petition with all relevant medical records obviously was designed to enable the special master to promptly evaluate and rule upon the claim. However, I also noted that the history of the Program has shown that that ideal is not achieved in every Program case. In a great many Program cases petitions have been filed with some medical records, but not all of those necessary for processing the case, while in a substantial number of cases petitions have been filed without *any* records at all. In such cases, the processing of the claim has been delayed for at least some period of time until the necessary records could be obtained. Yet, in those situations during the first 14 years of the Program's existence, it was never argued, by respondent or anyone else, that petitions that were not complete when filed should be summarily dismissed for that reason. I concluded that the crucial legal question was whether any part of the Vaccine Act *requires* that a petition *automatically be dismissed* if it is filed without the medical records necessary to fully evaluate the petition. Reading the statute as a whole, I found that the statute does *not* so require. (2002 WL 3196543 at *3-4.)

I noted that while the statute does state, as noted above, that the petition "shall" contain certain medical records, the statute and this court's rules are silent concerning what should happen in the event that a petition is filed without such medical records. I noted that the interpretation of the statute that has obviously been utilized by all of the special masters throughout the history of the Program is that, considering the statute as a whole, the presiding special master in each Program case has *discretion* to entertain petitions filed without all of the required documents, and to allow the petitioner to file at a later time any documents that were not filed with the petition. I concluded that the existence of such discretion is supported by a number of statutory provisions, by a review of this court's rules, and by the legislative history of the Program. (*Id.* at *4-6.)

I further explained that in denying the respondent's motion to dismiss, I was *not* claiming, as respondent had suggested, the authority to "waive" or "amend" the requirement that the petitioner file the materials described in § 300aa-11(c). Of course, I explained, I would not purport to *resolve* this case without those materials. I concluded merely that a special master has discretion to *defer* the filing of such materials to a later time, in situations in which the overall circumstances of the case make such deferral seem appropriate. (*Id.* at *7.)

After determining that a special master has *discretion* whether or not to dismiss a Program petition that is not accompanied by all of the materials specified in § 300aa-11(c)(1) and (2), I found it appropriate that I exercise my discretion in this case, as I would in similar "short-form petition" autism cases, *not* to dismiss the petition. (*Id.* at *7.)

Finally, I determined that there is no good reason in this and the other short-form petition autism cases to order that each petitioner file *at this time* all of the medical records relevant to the illness in question. I concluded that the Chief Special Master was correct when he determined, in the *Autism General Order #1*, that it is appropriate to allow the autism petitions to be filed via short-form petitions, and to permit the filing of medical records in these cases to be deferred pending the completion of the Omnibus Autism Proceeding. I explained that under the procedure that the OSM

has adopted for processing these cases, there is simply no reason to evaluate the specific records of each individual case until *after* the petitioners have had a chance to present their case concerning the *general causation* issue. That is, if the Omnibus Autism Proceeding turns out *not* to produce valid proof of causation that would seem to apply to a certain case or a class of cases, such affected petitioners might elect *not* to request that a special master conduct an evaluation of the specifics of their cases. In other words, it might become plain that such petitions must be rejected without the need for evaluation of the specific medical records in the cases. Therefore, it may turn out that it will be unnecessary to *ever* specifically evaluate the individual records in some, and perhaps even a great many, of the autism cases. Thus, it might turn out to have been a considerable waste of time and money to have required that the voluminous medical records in such cases be filed, when such records would ultimately never be reviewed. (*Id.* at *8-11.)

III

RESPONDENT'S CURRENT MOTION SEEKING "APPROPRIATE RELIEF"

After the issuance of my ruling in *Stewart I*, denying respondent's motion to *dismiss* this petition, respondent filed the motion at issue here, the "Motion for Appropriate Relief." Again, respondent focuses on the fact that this "short-form" petition was unaccompanied by medical records, but this time respondent argues for a different form of relief, rather than immediate dismissal of the petition.

To understand the relief that respondent seeks here, one must begin by examining certain aspects of the Program scheme. One of the key purposes behind enactment of the Program, of course, was to deflect litigation away from vaccine manufacturers and administrators. (See, *e.g.*, H.R. Rept. No. 99-908, 99th Cong., 2d Sess. 1986, at 6-7 (*reprinted* at 1986 U.S.C.C.A.N. 6347-48).) Thus, the Vaccine Act provides that no person may sue a vaccine manufacturer or administrator for more than $1000 on account of an allegedly vaccine-related injury until that person has first filed a Program petition *and* the Program proceeding with respect to such petition has concluded in either of two ways. § 300aa-11(a)(2)(A). Specifically, either (1) the Court of Federal Claims must have issued a "judgment" on such petition, and the petitioner must have filed an election declining to accept that judgment and choosing instead to proceed with a suit against the vaccine manufacturer or administrator (§ 300aa-11(a)(2)(A)(i)); or (2) the person must have elected to withdraw the Program petition "under section 300aa-21(b)" of the Vaccine Act (§ 300aa-11(a)(2)(A)(ii)).

The first of the two ways in which a Program proceeding must be concluded, in order to preserve the petitioner's right to file a tort action against the vaccine manufacturer or administrator, seems straightforward. The Court of Federal Claims must have "issued a judgment" on the petition--that is, evaluated the merits of the petition and either rejected the petition or awarded compensation on it--and the petitioner must have elected to reject the court's judgment and to instead file a tort

suit.[5] The second way of concluding the proceeding, for purposes of § 300aa-11(a)(2)(A), however, merits some explanation. This second option seems to have been designed by Congress as a way to prevent a petitioner from being locked indefinitely into the Program compensation system, against the petitioner's will. That is, the Vaccine Act requires that the special master assigned a Program petition must issue a decision on the petition within 240 days "after the date the petition was filed." § 300aa-12(d)(3)(A).[6] If for some reason the special master is unable to rule on the petition within that 240-day period, the master is required to issue to the petitioner a notice that the petitioner may withdraw the petition. § 300aa-12(g). The petitioner may then choose either to remain within the compensation system or to withdraw. § 300aa-21(b). Thus, this provision ensures that if a petitioner is dissatisfied with the amount of time being taken to evaluate his Program petition, such petitioner has an option to leave the system and proceed with a tort suit.

The "relief" that the respondent seeks in this case, therefore, deals with the operation of this second way of exiting the Program compensation system. Respondent seeks, in effect, a change in the way that the statute has been interpreted with respect to the issue of *when the 240-day period begins to run*. For the first 14 years of the history of the Program, my own interpretation--and, as far as I can tell, the interpretation of all of the other Program special masters[7]--has been that the notice required by § 300aa-12(g) is to be issued 240 days after the date upon which the *petition was filed* with the court. Respondent now urges, however, that such notice should not properly be issued until 240 days after the petitioner files the *last of the documents specified* to be filed pursuant to § 300aa-11(c)(1) and (2).

Respondent offers several arguments in favor of his proposed interpretation of the statutory scheme. First, respondent argues that his interpretation would logically fit the purposes behind the Program. That is, respondent notes that the statute provides that when a Program petition is filed, it is to contain the "supporting documentation" demonstrating the merits of the claim (§ 300aa-11(c)(1)), as well as all medical records related to the injured party's condition (§ 300aa-11(c)(2)). Respondent points out that when a petition is filed containing all such documents, the assigned special master then has a full 240-day period in which to evaluate the merits of the claim. Respondent argues that Congress must have intended that a special master always have that full 240-day period to evaluate the merits of a claim, so that in situations in which a Program petition, when

---

[5]Under the statutory scheme, even a petitioner who is awarded compensation, but for some reason is unsatisfied with such compensation, may elect to reject such compensation, and instead file a tort suit. § 300aa-21(a). (To my knowledge, however, such a rejection of an actual Program compensation award has occurred only extremely infrequently.)

[6]That 240-day period may be extended for up to 180 days (see § 300aa-12(d)(3)(C)), but that exception is not of relevance here, and for convenience' sake I will generally refer in this opinion to the "240-day period" of § 300aa-12(d)(3)(A).

[7]I also note that, to my knowledge, until respondent filed the instant motion in this case, the respondent, too, had never raised the statutory interpretation offered in this case.

filed, is not accompanied by all of the documents specified in § 300aa-11(c)(2), Congress must have intended the 240-day period to begin running only on the date on which the last of the documents specified in § 300aa-11(c) is filed.

Second, respondent points to the language of § 300aa-21(b), which states that: "A petitioner *under a petition filed under section 300aa-11 of this title* may submit * * * a notice choosing to continue or withdraw the petition if a special master fails to make a decision within the 240 days * * *." § 300aa-21(b), emphasis added. Pointing to the words italicized above, respondent argues that Section 21(b)'s "specific reference to section 11" indicates that strict compliance with section 11, including its documentation requirements contained at § 300aa-11(c)(2), "is required to commence the [240-day] withdrawal timetable." (Motion at p. 8.)

Third, respondent relies upon an item of legislative history. Specifically, respondent points to a notation in the conference report created when part (2) was added to § 300aa-11(c) in 1989. That report stated that--

> [t]he conferees anticipate that petitions for compensation can be reviewed by the court for completeness under these standards and *that the statutory time frame for compensation proceedings will commence from the receipt of a petition containing the specified materials*.

H.R. Conf. Rept. No. 101-386, 101st Cong., 1st Sess. 1989, at 513 (*reprinted* at 1989 U.S.C.C.A.N. 3116) (emphasis added). Pointing to the language emphasized above, respondent argues that the conference report demonstrates that Congress intended that the 240-day period for a special master's decision would commence only after the petitioner has filed all of the materials specified under § 300aa-11(c).

IV

ANALYSIS OF RESPONDENT'S CLAIM FOR RELIEF

In this instant motion the respondent proposes an interpretation of the statutory provision at issue that would create a logical scheme for determining the commencement of the 240-day period for resolving Program claims. Moreover, respondent also points to an item of legislative history that offers some support to respondent's proposed interpretation. However, after careful consideration, I must reject respondent's interpretation, because it is simply contrary to the *plain language of the statute* on this point.

A. The statute's plain language

In my view, the relevant statutory language is quite plain and straightforward. The special master's decision is to be filed "not later than 240 days * * * after *the date the petition was filed*." § 300aa-12(d)(3)(A)(ii), emphasis added. Then, the two statutory provisions that prescribe *what*

happens if the 240-day period is not met, simply refer back to the language of § 300aa-12(d)(3)(A)(ii). That is, if the special master cannot file a decision "within the 240 days prescribed by subsection (d)(3)(A)(ii) of this section," the master must issue to the petitioner a notice giving the petitioner the option of withdrawing from the Program. § 300aa-12(g)(1). Further, a petitioner is authorized to file a notice to withdraw the petition if the special master fails to make a decision on such petition "within the 240 days prescribed by section 300aa-12(d)(3)(A)(ii)." § 300aa-21(b). Therefore, the petitioner's option to withdraw from the Program, as described in § 300aa-21(b), plainly arises at the conclusion of the "240 days prescribed by section 300aa-12(d)(3)(A)(ii)." § 300aa-21(b). And § 300aa-12(d)(3)(A)(ii), in turn, states that the special master's decision is to be filed within 240 days "after the date the petition was filed." Plainly, § 300aa-12(d)(3)(A)(ii) does *not* call for the decision to be made within 240 days of the date on which the petitioner supplied the last of the documents described by § 300aa-11(c)(1) and (2); rather, it *specifies* that the decision is to be filed "not later than 240 days * * * after *the date the petition was filed*" (emphasis added).

B. Discussion of respondent's arguments

I have carefully considered each of the respondent's arguments in support of respondent's proposed statutory interpretation. I will discuss each of these arguments separately below.

1. The logical nature of respondent's proposed scheme

Admittedly, respondent's proposed interpretation of the statute would set up a logical statutory scheme. That is, since Congress apparently wanted a special master to have 240 days to fully evaluate a petition, it would have been quite logical to have that 240-day period run from the date on which the petitioner files the last of the materials necessary for the master's evaluation of the petition. But the relevant statutory language does not specify such a scheme, as it could have. Instead, the language specifies quite plainly that the relevant period expires 240 days "after the date the petition was *filed*" (emphasis added). § 300aa-12(d)(3)(A)(ii). Thus, while respondent proposes a logical scheme, it simply is *not* the scheme that Congress, for whatever reason, enacted.

2. The statutory phrase "under a petition filed under section 300aa-11"

Apparently realizing that the plain statutory language of § 300aa-12(d)(3)(A)(ii) is problematic for respondent's interpretation, respondent emphasizes certain language in § 300aa-21(b). That is, respondent points to the language of § 300aa-21(b), which states that: "A petitioner *under a petition filed under section 300aa-11 of this title* may submit * * * a notice choosing to continue or withdraw the petition if a special master fails to make a decision within the 240 days * * *." § 300aa-21(b), emphasis added. Pointing to the words italicized above, respondent argues that Section 21(b)'s "specific reference to section 11" indicates that strict compliance with section 11, including its documentation requirements contained at § 300aa-11(c)(1) and (2), "is required to commence the [240-day] withdrawal timetable." (Motion at p. 8.)

After full consideration, I cannot find this argument to be persuasive. It seems quite

farfetched that by adding the words "under a petition filed under section 300aa-11 of this title" Congress meant to specify when to begin the 240-day period of either § 300aa-12(d)(3)(A)(ii) or § 300aa-21(b)(1). There is nothing in the legislative history to indicate that this was the intended meaning of the above-quoted clause mentioning section 11. If it was actually Congress' intent to specify that the 240-day period would commence only at the point when petitioner files the last of the documentation required by § 300aa-11(c)(1) and (2), then the obvious way to accomplish that result would have been to modify the language of § 300aa-12(d)(3)(A)(ii), by changing "after the date the petition was filed" to words such as "after the date on which the petitioner completes the documentation required under section 300aa-11(c)(1) and (2) of this title." In contrast, it seems to me that it would have been very strange legislative draftsmanship for Congress to attempt to accomplish that result instead in a very vague, roundabout, ambiguous fashion by merely making a vague reference to §300aa-11 in the above-quoted language of § 300aa-21(b).

It seems to me, rather, that the above-quoted phrase "under a petition filed under section 300aa-11 of this title," inserted after the word "petitioner," was simply a way of specifying that the section refers to a *Program* petitioner, as opposed to some other type of petitioner. At first impression, it might seem odd that Congress would even bother to insert that phrase for such a purpose; after all, any reference in § 300aa-21(b) to "a petitioner" would seem obviously to refer to a *Program* petitioner, not some "petitioner" who filed some type petition wholly unrelated to the Program. However, legislative draftsmen are often inclined, apparently for purposes of making the law absolutely clear beyond any conceivable dispute, to repeat throughout statutes similar qualifying phrases that might have been omitted as unnecessary. Indeed, the very qualifying phrase here at issue--*i.e.*, "under a petition filed under section 300aa-11 of this title"--in fact appears, in verbatim or near-verbatim form, in numerous sections of the Vaccine Act immediately after the word "petition" or "petitioner," and in every instance the phrase seems to have no meaning other than simply to specify that the section refers to a *Program* "petition" or a *Program* "petitioner." For example, in one part of the Vaccine Act, the statute provides that in "all proceedings brought by the filing of a *petition under section 300aa-11(b) of this title*," the Secretary of Health and Human Services shall be named as the respondent. § 300aa-12(b)(1), emphasis added. The very next statutory sentence provides that the Secretary shall publish a notice whenever he or she "receives service of *any petition filed under section 300aa-11 of this title*." § 300aa-12(b)(2), emphasis added. In both cases, the language "under section 300aa-11(b) of this title" or "filed under section 300aa-11 of this title" seems to do no more than to specify that the section applies to *Program* petitions.

Similarly, in at least eight other provisions of the Vaccine Act, the phrase "filed under section 11 of this title" or the phrase "under section 11 of this title" immediately follows the word "petition" or "petitioner," and in each case the phrase seems to be intended merely to specify that the section applies to a *Program* "petition" or *Program* "petitioner." See § 300aa-12(c)(6)(E); § 300aa-14(b)(3)(B); § 300aa-15(a); § 300aa-15(b); § 300aa-15(e)(1); § 300aa-17(c); § 300aa-21(a); § 300aa-21(c).

Accordingly, I conclude that, contrary to respondent's argument, the inclusion of the phrase "under a petition filed under section 300aa-11 of this title" in the language of § 300aa-21(b) does not offer any substantial support to the respondent's interpretation of the provision here at issue.

C. The legislative history reference

Third, respondent relies upon an item of legislative history. Specifically, respondent points to a notation in the House-Senate conference report created when part (2) was added to § 300aa-11(c) in 1989. That report stated that--

> [t]he conferees anticipate that petitions for compensation can be reviewed by the Court for completeness under these standards and *that the statutory time frame for compensation proceedings will commence from the receipt of a petition containing the specified materials.*

H.R. Conf. Rept. No. 101-386, 101st Cong., 1st Sess. 1989, at 513 *(reprinted* at 1989 U.S.C.C.A.N. 3116) (emphasis added). Pointing to the language emphasized above, respondent argues that the conference report demonstrates that Congress intended that the 240-day period for a special master's decision would commence only after the petitioner filed all of the materials specified under § 300aa-11(c)(1) and (2).

Actually, although respondent does not so note in respondent's briefs, the same sentence also appears in virtually the same form in two other places in the legislative history of the 1989 amendments to the Vaccine Act. Specifically, it appears in the House report (H.R. Rept. No.101-247, 101st Cong., 1st Sess. 1989, at 510-511 (*reprinted* at 1989 U.S.C.C.A.N. 1906)); and in the remarks of Senator Kennedy describing the bill before the Senate on November 17, 1989 (135 Cong. Rec. S16155-02, 101st Cong., 1st Sess. 1989). I must acknowledge that the existence and repetition of this sentence in the legislative history does seem to offer some support for respondent's proposed interpretation of the provision here at issue. However, after a careful analysis of this legislative history in the full context of the statutory interpretation issue here, I conclude that the existence of this legislative history cannot carry the day for respondent's proposed interpretation, for two major reasons.

First of all, the statement repeated in the legislative history, while offering some support to respondent's argument, upon close inspection does not offer as clear support as might appear at first glance. The pertinent part of the sentence is that the Congressional sponsors of the legislation "anticipate * * * that the statutory time frame for compensation proceedings will commence from the receipt of a petition containing the specified materials." Respondent seems to suggest that this clause indicates the sponsors' belief that in adding the new part (2) to § 300aa-11(c), they were clarifying the statute to specify that the 240-day period would not begin to run until all of the materials specified in part (2) were filed. But that is not exactly what the clause states. It states, rather, that the sponsors "anticipate" that the 240-day period "will commence from" the filing of a "petition containing the specified materials." In other words, it indicates that the sponsors

"anticipated" that because of the statutory change specifying *what materials are to be filed with the petition*, in most Program cases a complete petition will in fact be filed, and therefore the statutory 240-day period, which by the plain operation of § 300aa-12(d)(3)(A)(ii) commences on the filing date, will in fact "commence from the receipt of a petition containing the specified materials."

Therefore, the legislative history sentence in question can be interpreted as simply the Congressional sponsors' statement of what they "anticipated" to be the likely *practical result* of their statutory change. They anticipated that as a result of adding part (2) to § 300aa-11(c), the petition when filed would be complete, at least in most cases, and thus in most cases the commencement of the 240-day period would coincide with the availability of a complete case record for the special master to evaluate.

It is important, moreover, to point out that Congress must have "anticipated" that this result would happen only in *most* Program cases, not in *all* of them. That is because in adding part (2) to § 300aa-11(c), Congress also added part (3), which provides an important *exception* to the general rule of part (2). While part (2) provides a list of materials relevant to the case that are required to be filed with the petition, part (3) provides the exception that if any of the required materials are "unavailable" at the time of the petition filing, the petition may simply identify such unavailable records and provide a statement of the reasons for their unavailability. The fact that Congress provided this exception for unavailable materials is quite important to the analysis here. In providing this exception, Congress made it clear that it understood that in some cases the Program petition would *not* be accompanied by all of the specified materials. And while providing that exception, Congress could have, of course, also specified, in the wording of § 300aa-12(d)(3)(A)(ii), that the 240-day decision period would commence only upon the filing of a *complete* petition. But in fact § 300aa-12(d)(3)(A)(ii), which was added to the Vaccine Act as part of the same set of 1989 amendments that added parts (2) and (3) to § 300aa-11(c),[8] merely stated that the special master's decision was to be filed within 240 days "after the date the petition was filed." It did *not* state that the 240-day period would be any different in those cases in which, due to the "unavailability exception" of § 300aa-11(c)(3), the petition when filed would *not* be accompanied by a complete set of materials.

Thus, the legislative history clause in question may be viewed merely as an indication that Congress anticipated that in *most* future Program cases the petition would be complete when filed, rather than an indication that Congress thought that it was enacting, in § 300aa-12(d)(3)(A)(ii), a 240-day period that would run from the filing date in some cases, but from a later date in other cases.

The second reason that this legislative history cannot carry the day for respondent, concerning the statutory interpretation at issue here, is simply that a statement in legislative history, even if unambiguous, cannot outweigh plain language of the statute itself. In this case, the actual *statutory language* plainly and unambiguously states that the 240-day period runs from "the date the petition

---

[8]See Public Law No. 101-239, December 12, 1989, "Subtitle D -- Vaccine Compensation Technicals," 103 Stat. 2285-2294.

was filed." § 300aa-12(d)(3)(A)(ii). Thus, even if the draftsman of the legislative history sentence thought it would be a good idea for the 240-day period to commence at a later time in some cases, the statutory language *actually enacted* states plainly to the contrary. As a judicial officer interpreting the statute, I must adhere to the actual language of the statute as it was enacted. In situations in which the statutory language is ambiguous, then legislative history may indeed assist in choosing between two or more plausible readings of the language. But where, as here, the statutory language is plain and *unambiguous*, I am not free to depart from the statute's plain meaning, even if the legislative history indicates unambiguously (which in this case it does not) that Congress intended something different from the enacted language. See, *e.g.*, *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 462 (2002) ("When the words of a statute are unambiguous, then * * * judicial inquiry is complete," quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992)); *Ex parte Collett, 337 U.S. 55, 61* (1949) ("There is no need to refer to the legislative history where the statutory language is clear."); *Gemsco v. Walling*, 324 U.S. 244, 260 (1945) ("Plain words and meaning of a statute cannot be overcome by a legislative history * * *."); *United States v. Oregon*, 366 U.S. 643, 648 (1961) (Where the provisions of a statute "are clear and unequivocal on their face, we find no need to resort to the legislative history.").

C. Conclusion

In short, after carefully considering the respondent's arguments concerning the issue of statutory interpretation here in question, I must reject those arguments, and deny the relief requested. I conclude that the 240-day period relevant to § 300aa-12(d)(3)(A)(ii), and also relevant to § 300aa-12(g) and to § 300aa-21(b), properly runs from the date on which the petition in the case was *filed*.[9]

V

ADDITIONAL DISCUSSION

In the pages above, I have resolved the particular motion pending before me in this case, and this opinion could end at this point. However, due to the unique circumstances of the autism cases and to certain assertions contained in the respondent's motions in this case, I find it appropriate to add here some additional discussion. I will divide these remarks into four sections below.

---

[9]In this case, the petition was filed on July 18, 2002. Measured from that date, the initial 240-day period expired on March 15, 2003. However, the petitioner at that time moved for a suspension of proceedings in this case for up to 180 days pursuant to § 300aa-12(d)(3)(C), thus extending the date for the special master's decision for an additional 180 days, until September 11, 2003. (See my Order filed March 25, 2003.)

Accordingly, pursuant to my conclusion in this Ruling, denying respondent's motion concerning the calculation of the 240-day period, the 420-day extended period for decision (240 days under § 300aa-12(d)(3)(A) plus 180 days under § 300aa-12(d)(3)(C)) will expire on September 11, 2003.

A. *Assertions in respondent's "Motion for Appropriate Relief"*

First, I note that in his "Motion for Appropriate Relief," respondent has included several remarks asserting or suggesting that a ruling denying that motion, combined with my ruling in *Stewart I* and the decision in the *Autism General Order #1* to permit use of the short-form petitions, would cause harm to the Program and/or thwart the Congressional intent behind the Program. Specifically, respondent has asserted that my denial of respondent's motion would cause "irreparable harm to the Program" (Motion at 3); would "frustrate Congress' intent that the Program provide a meaningful alternative to traditional civil actions" (*id.* at 3); would "create a loophole" in the Program (*id.* at 9); and would "deprive the Program of any opportunity to consider" the claims of petitioners (*id.* at 10). These are serious charges, requiring discussion. I believe that careful analysis of these claims will demonstrate that these allegations do not have merit. Such analysis will demonstrate that to the extent that there does exist the "loophole" of which respondent complains, that "loophole" exists as a result of Congress' *own design of the Program*, not as the result of the rulings of special masters in the *Autism General Order #1*, *Stewart I*, and this ruling, to which I will refer as "*Stewart II*."

In essence, the source of respondent's consternation is that pursuant to the special master rulings in question, it is conceivable that a petitioner could file a short-form petition without filing the relevant medical records, and then, 240 days later, withdraw from the Program and thereafter file a tort suit. Respondent laments the fact that under such a scenario, no special master will ever have actually looked at that particular vaccinee's medical records and made a formal ruling as to whether the vaccinee's autism was vaccine-caused. Respondent argues that such an occurrence would frustrate the intent of Congress that a Program petitioner receive an evaluation of his claim by a special master. But while this argument is glib and may have some facial appeal, it breaks down under careful analysis.

1. *No practical difference in actual case processing*

First, the fact is that there would be no *practical difference* in the actual processing of the autism cases *even if respondent's views prevailed* concerning these procedural issues in dispute in the autism cases. If the Chief Special Master had required that full medical records be filed with each petition, that would *not* have meant that, as respondent seems to imply, a meaningful analysis of the petitioner's claim could have been completed within the 240-day post-filing period in each case. To the contrary, as respondent's attorneys are well aware, no meaningful evaluation of medical records can occur until *after* the petitioners present their expert medical evidence concerning the general causation issue in the course of the Omnibus Autism Proceeding. As acknowledged by the attorneys who have represented the petitioners in the Omnibus Autism Proceeding, the petitioners' theory of proving vaccine causation in these autism cases will rely on *expert testimony*. It is undisputed that in these cases the *medical records alone* will never contain evidence sufficient to demonstrate that it is "more probable than not" that a vaccinee's autism was vaccine-caused. Indeed, in nearly 500 of the autism cases on my docket, filed prior to the *Autism General Order # 1*, short-form petitions were not used; in most of those cases substantial medical records were in fact filed,

and the respondent's medical experts had the opportunity to review and evaluate those medical records. Yet in *none* of those nearly 500 cases have the respondent's medical experts conceded that the vaccinee's autism was vaccine-caused based upon the medical records. Thus, in these autism cases, until the petitioners are ready to present their expert testimony supporting their claim that the types of vaccinations in question can cause autism, the medical records are essentially meaningless. It will be useful to review those records in a specific case *only* if the petitioners are able to first present expert testimony showing it probable that the types of vaccines in question *can* cause autism.

Therefore, even if the Chief Special Master had acceded to respondent's view, requiring that full medical records be filed with each petition, neither I nor any other special master would yet have actually evaluated those records in any case, simply because the time is not yet ripe for such an evaluation. Yet the 240-day decision period in many of the cases would have expired by now, even under respondent's statutory interpretation, and the petitioners in those cases would clearly have been free to withdraw from the Program if they wished, pursuant to § 300aa-21(b).

Similarly, there would likely be no practical difference, in terms of actual case processing, if I were to rule now that the 240-day period of § 300aa-12(d)(3)(A)(ii) does not begin to run until the filing of the last of the materials specified in § 300aa-11(c)(1) and (2). Presumably, in that event, many petitioners would immediately file all records, in order to start the 240-day clock running. But again, those records would still merely remain on file at the office of the Clerk of this court during the next 240 days, and would still *not* be individually evaluated by a special master until after the conclusion of the Omnibus Autism Proceeding.[10] And after expiration of the 240 days in each case, again each petitioner would be eligible to leave the Program under § 300aa-21(b), despite the fact that no special master had yet evaluated the specific records of that case. Thus, in the actual processing of each case, there would be no practical difference from the current processing system.

Thus, in my view, there is simply no merit to the respondent's argument that harm to the Program or frustration of the Congressional intent will occur as a result of the procedural rulings in question in the *Autism General Order #1*, *Stewart I*, and this *Stewart II* ruling. The fact is that the *actual processing* of the individual cases would have been *practically the same* under the respondent's interpretations as has been the case under the interpretations actually adopted in those rulings. In either case, most of the autism petitioners would end up with the option of leaving the Program under § 300aa-21(b) prior to the evaluation of the particulars of their own cases. Therefore, it cannot be fairly said that, as the respondent argues, the interpretations adopted by the special masters will cause harm to the Program or frustrate the Congressional intent.

---

[10]The petitioners' counsel in the Omnibus Autism Proceeding are currently still pursuing discovery, and at this time it does not appear likely that the hearing on the general causation issue will conclude within the next 240 days.

2. *The alleged "loophole"*

Second, the alleged "loophole" of which respondent complains is *not* a product of the rulings in the *Autism General Order #1, Stewart I, and Stewart II*, as respondent asserts, but is in fact the product of Congress' own design of the Program.

As noted above, respondent argues that a situation in which a petitioner can leave the Program via § 300aa-21(b) before a special master evaluates that petitioner's medical records constitutes a "loophole" in the Program scheme. Respondent argues that such a "loophole" was created by the allegedly erroneous special master rulings. However, as shown immediately above, the very same "loophole" would exist even under the respondent's proposed statutory interpretations, because even though medical records might be *filed*, a petitioner still could exit the Program without the special master having *evaluated* such records. Moreover, this alleged "loophole" is not a result of any erroneous interpretations, but it is simply a product of Congress' own design of the Program.

Respondent is correct, of course, in asserting that Congress designed the Program as an alternative to tort litigation against vaccine manufacturers and administrators. Congress did, undoubtedly, generally intend that each Program petitioner would obtain from the Program an evaluation of his or her claim of vaccine-related injury. Congress certainly hoped that any claimant *receiving* a Program award as a result of such an evaluation would accept such award and thereby forego the possibility of a tort suit, and also hoped that many claimants who were *denied* Program awards would nevertheless be satisfied with that "day in court" and would be dissuaded from filing tort suits. However, Congress did *not* make the Program the *exclusive* remedy for vaccine-related injuries. Instead, Congress designed the Program to give any claimant who was dissatisfied with the size of a Program award, or who failed to obtain a Program award, the option to *reject* the Program verdict and to thereafter file a civil action against the vaccine manufacturer or administrator. § 300aa-21(a). Congress also enacted the provision at issue here, giving a petitioner the option to exit the Program even prior to an actual ruling on the petitioner's claim, after 240 days. It is these latter two features of the Program, specifically designed by Congress, that combine to create the "loophole" that respondent perceives. That is, Congress designed a system in which a claimant in fact may, if he so chooses, enter and exit the Program without having made a true effort to prove that his injury was vaccine-caused. A claimant may, if he desires, merely treat the Program as a 240-day delay before filing a tort suit, without giving the assigned special master a true opportunity to evaluate the merits of the claim. As will be seen, I see little evidence that many petitioners have in fact taken such an approach to the Program, but the Program's design obviously leads to that *possibility*.

For example, in cases in which a petitioner does not allege an injury falling within the Vaccine Injury Table, but instead alleges that a vaccination "caused-in-fact" an injury,[11] the

---

[11]In the Program, there are two separate means of establishing entitlement to compensation. First, if an injury specified in the "Vaccine Injury Table," originally established by statute at § 300aa-14(a), occurred within a time period after vaccination prescribed in that Table, then that injury is

purported proof of causation almost always involves not only medical records of the victim's actual treatment, but also the testimony of one or more medical experts, offering the opinion that a vaccination caused the injury. But the Program's structure does not require that a claimant present such expert testimony in the Program case in order to preserve the option of later relying on such testimony in a tort suit. If a claimant, for whatever reason, wishes to proceed through the Program as quickly as possible without regard to maximizing his chances to obtain a Program award, such person could simply file the medical records in the Program proceeding without offering any expert testimony, wait for either a formal rejection of his claim or the expiration of the 240-day decision period, and then proceed to the desired tort suit. Such a scenario, in which a petitioner filed a Program petition but made no real effort to prove the Program case, may be viewed as a "loophole," in the sense that the Program in that case will not achieve the end for which Congress hoped--*i.e.*, the petitioner will not have received a true evaluation of his claim from a special master, and the possibility of a tort suit will not be avoided. But Congress, in enacting the Program structure that it did, certainly understood that such a scenario might take place.

Further, in this hypothetical example of a person who is intent on suing a vaccine manufacturer or administrator and views the Program as a mere "speed bump," it does not matter at all as a practical matter whether or not the person actually filed in the Program proceeding the medical records concerning the injury in question. If it is clear in a Program proceeding that the medical records by themselves do not demonstrate vaccine causation, as a practical matter the special master is not going to study those medical records for non-existent evidence of vaccine causation. The special master will wait to see if the petitioner can file an expert report supporting his claim, and if the petitioner fails to do so but instead waits for 240 days and then exits the Program via the route of § 300aa-21(b), then the special master will in fact *never* study those medical records. But in such a scenario the petitioner would still undoubtedly be free to file his tort suit, even though no special master ever actually analyzed the medical records.

Therefore, it should be clear that the scenario which respondent laments as a "loophole," in which a petitioner enters and exits the Program without a special master having specifically evaluated that petitioner's actual medical records, is a scenario that is inherent in the design of the

---

presumed to qualify for compensation. § 300aa-13(a)(1)(A); § 300aa-11(c)(1)(C)(i); § 300aa-14(a). If a person qualifies under this presumption, he or she is said to have suffered a "Table Injury." Alternatively, compensation may also be awarded for injuries not listed in the Table, but entitlement in such cases is dependent upon proof that the vaccine *actually caused* the injury. § 300aa-13(a)(1); § 300aa-11(c)(1)(C)(ii).

When Congress designed the Program and published the initial Vaccine Injury Table, it was anticipated that most petitions would involve Table Injury claims, resolvable based on the medical records alone, and that was in fact the case during the early years of the Program. When such claims could be decided based on the medical records alone, then such claims could, often, be resolved within the 240-day period. In recent years, however, most Program cases, like the autism cases, have involved non-Table claims of "actual causation," which take more time to resolve.

Program. It simply can happen if a petitioner is determined, as is his option under the law, not to make a true effort to prove his case in the Program. As demonstrated above (pp. 14-15), it would happen even under the statutory interpretations urged by respondent.[12] Accordingly, the fact that this scenario may happen in some of the autism cases pursuant to the rulings of the *Autism General Order #1*, *Stewart I*, and *Stewart II*, does not indicate error in those rulings.

3. *No evidence of a planned exodus from the Program*

In addition, it is worthy of note that while respondent seems to suspect and worry that there are large numbers of autism petitioners who hope to treat the Program merely as a "speed bump" in their rush to file tort suits, the actual evidence on that point seems to be overwhelmingly to the contrary. At this time, of the approximately 3,100 autism cases filed in the Program, about 1500 have passed the 240-day mark from the date of filing. By my count, in only ten of those cases (cases in which medical records were filed, so that there is no dispute that the 240-day period properly expired) has the petitioner elected to exit the Program via the route of § 300aa-21(b). The experience is no different with respect to short-form petitions than with respect to those petitions which were filed with medical records. Approximately 1000 of the short-form petitions or similar petitions filed without medical records, those filed in July through December of 2002, have passed the 240-day mark from the filing date. In almost all of those cases, petitioners' counsel have requested that I *not* issue the formal notice specified in § 300aa-12(g) at the end of 240 days, but have instead requested that I *extend* the 240-day period for the maximum 180-day extension period permitted by § 300aa-12 (d)(3)(C).

This experience does not support, then, respondent's fears that the autism petitioners are intent on exiting the Program as soon as possible. To the contrary, it seems to show that the autism petitioners are committed to remaining in the Program *much longer* than required by the statutory scheme, in order to see what will happen with the resolution of the general causation issue in the Omnibus Autism Proceeding. And, in my view, that is not surprising. The Program offers the autism petitioners a chance to obtain compensation, while leaving them the option, if they fail to obtain Program compensation, to then pursue any tort actions available. In order to explore both compensation options--*i.e.*, Program and tort suit--by law a claimant must exhaust the Program option *first*. In these circumstances, it is not surprising to me that most petitioners will elect to first give the Program a full chance, before abandoning that option forever.

---

[12]This scenario can, *and sometimes does*, also happen under a very different type of situation. That is, very often in Program cases a petitioner acknowledges in a petition that the medical records by themselves will not demonstrate vaccine causation, but promises to supply an expert report. In such case the special master will wait until receiving the expert report before reviewing the medical records filed with the petition. If, as in some such cases, the petitioner subsequently reports that no favorable expert opinion can be obtained, the special master will then, quite properly, dismiss the claim without ever studying the medical records. But I have never heard it argued that such a scenario constitutes a "loophole" in the Program.

Thus, for this reason, too, it seems to me that respondent is mistaken in the dire predictions that the statutory interpretations reached in the *Autism General Order #1*, *Stewart I*, and *Stewart II* will result in harm to the Program and frustration of Congressional intent.

B. Validity of the short-form petitions

I also find it appropriate to comment on a statement by the respondent, in a brief filed in this case prior to the *Stewart I* ruling, that the short-form autism petitions "raise a significant question regarding whether they are legally adequate to stop the running of the Vaccine Act's statute of limitations." (Motion filed on August 15, 2002, p. 5, fn. 1.) I do not see merit in the suggestion that the short-form petitions might not stop the running of the statute of limitations, for a number of reasons.

1. Evaluation of the form of the short-form petitions

First, simply viewing the form of the short-form petitions, I do not see any substantial reason to doubt that the short-form petitions would serve to stop the running of the Vaccine Act's limitations period. By filing a short-form petition, each petitioner is clearly naming a particular vaccinee, alleging that such vaccinee suffered autism or an autism-like disorder as a result of MMR vaccines and/or thimerosal-containing vaccines, and certifying that the petition is being timely filed. (See Autism General Order #1 at Exhibits A and B (2002 WL 31696785 at *7-8).) It seems to me that such a petition is certainly specific enough, alleging a specific injury to a specific individual, to stop the running of the Vaccine Act's statute of limitations. See, *e.g.*, *Bull v. United States*, 295 U.S. 247 (1935), which stated as follows:

> The pleading was sufficient to put in issue the right to recoupment. The Court of Claims is not bound by any special rules of pleading; all that is required is that the petition shall contain a plain and concise statement of the facts relied on and give the United States reasonable notice of the matters it is called upon to meet.

295 U.S. at 263 (footnotes omitted).

2. The Program case law

Second, it seems to me that the precedent is clear as to the issue of what constitutes a valid Program petition, sufficient to stop the running of the limitations period. In *Weddell v. Secretary of HHS*, 23 F. 3d 388 (Fed. Cir. 1994), the petitioners filed a petition that included some, but not all, of the medical records specified by § 300aa-11(c)(2), and then later filed the remaining medical records. (23 F. 3d at 390.) The issue before the court of appeals was whether the "effective date of the filing of their petition" was the earlier date when the incomplete petition was received by the court, or the later date when the remainder of the medical records arrived. (*Id.* at 391.) The court concluded that the earlier date should be deemed the effective filing date, rejecting the argument that due to the missing records, the filing on that earlier date was "legally insufficient." (*Id.* at 392.)

In that *Weddell* decision, the Federal Circuit panel also cited and relied upon the decision in *Holmes v. Secretary of HHS*, No. 91-1343V, 1992 WL 121390 (Cl. Ct. Spec. Mstr. May 7, 1992). The court appeals described, with apparent approval, the holding in *Holmes* that a letter to the clerk of the court that contained only a brief recitation of the facts and expressed a desire for compensation under the Program "was an adequate 'filing' of a 'petition' for purposes of the Act's time deadlines." (23 F. 3d at 392.) I note that the letter recognized as a valid petition in *Holmes* apparently was not accompanied by any medical records at all. See 1992 WL 121390 at *1.

Another relevant Federal Circuit decision is *Robles v. Secretary of HHS*, 155 F. 3d 566 (Table), 1998 WL 228174 (Fed. Cir. 1998), an unpublished opinion. As an unpublished opinion, this opinion has been designated by the Federal Circuit as "nonprecedential," and is not to be cited in briefs filed with that court. (See Rule 47.6(b) of that court's rules.) However, while not constituting binding precedent, this opinion may be of persuasive value. In *Robles*, the petitioners sent a letter to this court (then known as the United States Claims Court) "requesting information" about the Program; after receiving such information, the petitioners later filed a formal Program petition. The issue before the court of appeals was "whether the * * * letter qualifies as a petition under the [Vaccine] Act." 1998 WL 228174 at *2. The special master found that the letter did not qualify as a petition, because the "requesting information" language indicated, in the master's view, that the petitioners did not intend the letter itself to serve to initiate a Program proceeding. The court of appeals, however, reversed. Relying on the fact that the letter contained "all the information 'sufficient under the Act to constitute a claim,'"[13] the court concluded that the letter qualified as a valid Program petition. 1998 WL 228174 at *3-4.

From the opinions of both the special master and the appellate court in *Robles*, it is clear that the letter recognized in that case as a valid petition, like the letter recognized as a valid petition in *Holmes*, was *not* accompanied by the medical records specified in § 300aa-11(c)(2). Thus, in *Robles* a Federal Circuit panel again reached the same conclusion adopted in *Weddell* and *Holmes*--that a filing that fails to contain all of the materials specified in § 300aa-11(c)(1) and (2), which nevertheless gives notice of the intent by a specific vaccinee to seek compensation for an allegedly vaccine-caused injury, will be considered a validly-filed Program petition.

The *Weddell* opinion, of course, constitutes binding precedent in the Federal Circuit, and the *Robles* opinion, while not precedential, indicates further support among members of that court for the legal principle established in *Weddell*. Accordingly, I note that the statement of the respondent

---

[13]The appellate opinion did not detail what constituted that "sufficient information," but the special master's opinion in *Robles* indicates that the letter included the vaccinee's name, the type of vaccination in question, and the nature of the alleged injury. *Robles v. Secretary of HHS*, No. 90-3001V, 1997 WL 178016, at *3 fn.6 (Fed. Cl. Spec. Mstr. Mar. 28, 1997).

quoted above, expressing doubt whether the short-form petitions are "legally adequate" to stop the running of the limitations period, seems to be directly contrary to legal precedent binding in this court.[14]

3. *The existence of § 300aa-11(c)(3)*

I also note that another factor militating against respondent's suggestion quoted above is the existence of § 300aa-11(c)(3). As explained above, § 300aa-11(c)(3) provides an *exception* to the general petition documentation requirements of § 300aa-11(c)(1) and (2), for documentation that is "unavailable" at the time of petition filing. As discussed above, the existence of that exception makes it clear that Congress anticipated that in some circumstances petitions would be filed without all of the documentation specified in § 300aa-11(c)(1) and (2). Thus, it seems extremely unlikely that Congress would have intended that a petition unaccompanied by all of the records specified in § 300aa-11(c)(1) and (2) would therefore be legally inadequate to stop the running of the statute of limitations.

4. *History of the Program*

Another point is that respondent's suggestion in this case, that a petition unaccompanied by medical records might not be sufficient to stop the running of the limitations period, is a very new idea, directly contrary to the respondent's position during the first 14 years of the history of the Program. As I pointed out in *Stewart I*, over the 15-year history of the Program, in a great many Program cases (probably a substantial majority) petitions have been filed with some medical records, but not all of those necessary for processing the case. Indeed, in a substantial number of cases--usually those in which the final allowable filing date under the statutory limitations period was approaching--petitions have been filed without any records at all; in some such cases the petitions have also contained very little description of the injury claimed, amounting to no more than a statement that a vaccinee was injured by a vaccination. In those situations, the processing of each case was delayed until the relevant records were obtained and the petitioner could specifically describe the alleged injury. Yet in those situations it was not argued, by respondent or anyone else, that petitions that were not complete when filed did not constitute valid petitions, or were not sufficient to stop the running of the limitations period. The footnote in the respondent's brief, quoted

---

[14]Further, I point out that when the Chief Special Master issued the *Autism General Order #1*, he and the other special masters with whom he consulted, including myself, were aware of the Federal Circuit's opinions in *Weddell* and *Robles*. The existence of these opinions, along with the fact that petitions unaccompanied by medical records had been routinely accepted as valid petitions throughout the history of the Program (see pp. 21-23 of this Ruling), were significant factors leading to the conclusion that it was reasonable and legally acceptable to permit the short-form petitions.

above, was the first time that respondent or anyone else, to my knowledge, ever made such a suggestion.[15]

---

[15]I note that respondent's counsel did *not* raise the suggestion being discussed here-- *i.e.,* that the short-form petitions might not be legally adequate to stop the running of the Vaccine Act's limitations period -- prior to the issuance of the *Autism General Order # 1*. As noted above (p. 2), the *Autism General Order # 1* resulted from a series of meetings in the summer of 2002 involving special masters (including myself), attorneys representing autism petitioners, and respondent's attorneys. As the Chief Special Master prepared to publish, on behalf of the Office of Special Masters(OSM), the *Autism General Order #1* and a related document issued several days later entitled *Discussion of Issue of "Short-Form" Petitions* (that *Discussion* document is available at the page of this court's website devoted to the Omnibus Autism Proceeding), drafts of those two documents were shared by the OSM with both petitioners' and respondent's counsel, and I discussed those drafts with the opposing counsel during an unrecorded telephonic conference on June 26, 2002. The *Discussion* document contained a summary of the respondent's arguments during the summer meetings in opposition to the proposal of the petitioners' counsel that the OSM permit the use of short-form petitions, and, during that conference on June 26, I specifically asked respondent's counsel whether that draft had accurately summarized respondent's arguments against the short-form petitions. I offered to permit respondent to put into the record of the Omnibus Autism Proceeding a written statement of respondent's objections. Respondent's counsel, during that conference of June 26, declined the opportunity to make a written filing, and replied that the OSM *Discussion* draft had accurately summarized the respondent's objections. That draft then was published, with no significant changes, as the *Discussion* document on July 8, 2002.

It is noteworthy that that *Discussion* document, in summarizing respondent's objections to the short-form petitions, nowhere reports any suggestion by respondent's counsel that the short-form petitions might be legally inadequate to stop the running of the Vaccine Act's limitations period. To the contrary, the *Discussion* document states specifically that (page 2, emphasis added)--

> the court does *not* interpret respondent's position to be questioning whether such a short-form petition would qualify as a valid petition, thereby invoking this Court's jurisdiction over the case and complying with the timely-filing provisions of § 300aa-16.

It is noteworthy that respondent's counsel did not at the time of the June 26 conference raise any objections to this statement quoted immediately above.

Thus, at the time of the publication of the *Autism General Order #1* and the *Discussion* document (on July 3 and July 8, 2002, respectively), the respondent's representatives clearly had not yet raised the suggestion that the short-form petitions, whatever their other alleged faults, might not be legally adequate to stop the running of the Vaccine Act's limitations period. That suggestion was not raised by respondent until later, in the form of the above-quoted footnote filed in this *Stewart* case.

In addition, I note that this suggestion of respondent is not only contrary to respondent's practice during the Program's first 14 years of not contesting the basic validity of Program petitions no matter how scanty the accompanying filing, but it is also contrary to respondent's practice *to this day* in the *non-autism* Program cases. I note that in a number of non-autism Program cases petitions have been filed without medical records even since the date (August 15, 2002) on which respondent filed the dismissal motion in this case. In those cases, not only has respondent not filed any dismissal motion, or otherwise contested Program jurisdiction over those non-autism petitions, but respondent's attorneys, to their credit, have often been helpful in such cases in assisting petitioners in obtaining and filing the necessary medical records. It seems to me that this continuing position and practice by respondent in the non-autism cases is highly inconsistent with respondent's suggestion that the short-form autism petitions may not be legally adequate to stop the running of the Vaccine Act's limitations period.

*5. **Potential injustice***

Finally, I note that in my view a gross miscarriage of justice would result if any court were to conclude that the short-form petitions were legally inadequate to stop the running of the Vaccine Act's statute of limitations. The fact is that more than 2,500 short-form petitions, or similar petitions filed without medical records, have been filed since the *Autism General Order #1* was published, with more such petitions being filed every day. These petitioners have relied on a published ruling of a judicial official of this court, plainly instructing them that the short-form petition form was acceptable. However, if it was hereafter decided that such petitions are not adequate to stop the running of the Vaccine Act's limitations period, then virtually all of these petitioners would have completely lost their right to seek Program compensation for their autism conditions, because it is likely that in most cases the relatively short Vaccine Act limitations period would since have expired, precluding any timely refiling.[16] Even worse, one section of the Vaccine Act may be interpreted as indicating that if a person with an allegedly vaccine - related injury fails to file a *Program* claim within the Vaccine Act's limitation period, then that person is also barred from filing a *tort suit* against a vaccine manufacturer or administrator on account of that injury.[17] Thus, it would be a monstrous injustice if the short-form petitioners, because they relied on a published ruling of a

---

[16]The Vaccine Act's limitations periods are set forth at § 300aa-16.

[17]Section 300aa-11(a)(2) provides that no civil action may be filed against a vaccine manufacturer or administrator "unless a petition has been filed, *in accordance with section 300aa-16 of this title*, for compensation under the Program ***." Since §300aa-16 provides the time deadlines for Program petitions, it is arguable that pursuant to the italicized language, if the Program petition was not timely-filed, then a tort suit is also barred.

judicial official of this court, were to lose not only their right to seek Program compensation, but also their right to pursue a tort claim.[18]

C. Suggestion of inconsistency

Finally, I note that during discussion at a recent unrecorded telephonic status conference conducted during the Omnibus Autism Proceeding, respondent's counsel made a comment suggesting the view that my action in denying this motion would reflect an inconsistency of statutory interpretational approaches between *Stewart I* and this *Stewart II* ruling. Specifically, it may be noted that in this *Stewart II* ruling I have relied decisively on the "plain language" of the statute--*i.e.*, the words "240 days * * * after *the date the petition was filed*." (§ 300aa-12(d)(3)(A)(ii), emphasis added.) The remark of respondent's counsel implied that in contrast, my ruling in *Stewart I* failed to afford equivalent decisive weight to the statutory language of § 300aa-11(c)--*i.e.*, the words stating that a Program petition "shall contain" supporting documentation ((c)(1)) and medical records ((c)(2)). Such a complaint of inconsistency by respondent might seem to be of some merit at first glance, but I believe that after a full comparison of these two issues of statutory interpretation, the proper view is that there is no inconsistency.

Comparing the two interpretational issues, I find substantial differences, so that the rulings reached concerning the two issues are not inconsistent. The issue addressed in this ruling, *Stewart II*, I believe is by far the easier of the two issues. As to this issue, respondent and I are in agreement that pursuant to the clear language of § 300aa-12(g)--*i.e.*, that the special master "shall" issue the notice at the conclusion of the "240 days prescribed by subsection (d)(3)(A)(ii)"--the special master *must* issue the notice at the expiration of the 240-day period. (See respondent's Response filed on March 31, 2003, p. 3.) The only question is *when* that 240-day period begins to run. And, as explained above, the statute plainly answers that "when" question by *specifying* that the period ends "240 days * * * after the date the petition was filed." § 300aa-12(d)(3)(A)(ii). That plain statutory language, then, mandates my conclusion as to the "when" question, in this *Stewart II* ruling.

In contrast, the statutory interpretation issue addressed in *Stewart I* concerned the very different issue of whether, when a Program petition is submitted that does not fully comply with the content requirements of § 300aa-11(c), the special master is *required to immediately dismiss* the petition. While, to be sure, those content provisions of § 300aa-11(c) are indeed stated in plain language themselves ("shall contain"), the statute does *not* contain language specifying *whether automatic dismissal is required* when a petition is submitted without all of the specified content.

---

[18]Because of the obvious and devastating injustice that would result if a court were to hold that the short-form petitions are inadequate to stop the running of the Vaccine Act's limitations period, my assumption is that in the footnote in question, the respondent was only noting that such a holding was a *theoretical possibility*. The respondent, I note, has *not* urged that such a holding would be *correct*. Indeed, I find it unlikely that the respondent or the Department of Justice would every actually urge a court to adopt such a draconian legal interpretation that would result in such a gross injustice.

Accordingly, in *Stewart I*, in the absence of controlling statutory language concerning the narrow issue in question, I found it appropriate to interpret the statute by resort to the overall context of the Vaccine Act and the Congressional purposes behind the statute. *Stewart I*, 2002 WL 31965743 at *5-7. Therefore, I see no inconsistency of statutory interpretational approach between *Stewart I* and this *Stewart II* ruling.

D. *Final remarks*

The procedural rulings set forth in the *Autism General Order #1*, in *Stewart I*, and in this *Stewart II* ruling have concerned difficult issues, about which reasonable minds can differ. In particular, I acknowledge that the initial decision reached in the *Autism General Order #1*, to permit use of short-form petitions, was a particularly difficult one. But I believe that these rulings have been correct. In particular, given the overall situation faced by the Office of Special Masters, I believe that it was the right decision to permit the use of the short-form petitions. I point again to the reasoning behind that decision set forth in the *Discussion* document, mentioned above, and in the final pages of the *Stewart I* ruling. As fully explained in those opinions, in my view there would have been no practical point in requiring the immediate filing of voluminous medical records in these thousands of autism cases, because, depending on the outcome of the general causation issue in the Omnibus Autism Proceeding, it may turn out that it will be unnecessary to *ever* specifically evaluate the individual records in some, and perhaps even a great many, of the autism cases. Thus, it might turn out to have been a considerable waste of time and money to have required that the voluminous medical records in such cases be filed, when such records would ultimately never be reviewed. And if, on the other hand, it turns out that the Omnibus Autism Proceeding produces evidence *supporting* a causal link between autism and the vaccines in question, the medical records in the individual cases can certainly *then* be filed, to determine whether each individual case fits within whatever causation pattern is identified in the Omnibus Autism Proceeding.

In short, I believe that the Office of Special Masters has developed a process for resolving these autism cases that is practical and logical, as well as legally faithful to the requirements of the Vaccine Act. Over the past year attorneys for both petitioners and respondent have worked enormously hard at the arduous discovery process, culling from government files, for use by petitioners' counsel and experts, massive amounts of vaccine-related documents which the petitioners believe to be necessary in developing their causation theory. I and the counsel for both sides are committed to moving the Omnibus Autism Proceeding forward as swiftly as is humanly possible toward resolution of the general causation issue. However, it must be kept in mind that the primary purpose of the Program is to *benefit the petitioners*, and in these autism cases the petitioners are families with children suffering from devastating disorders. I believe that it is appropriate to give the petitioners' representatives the time that they need to develop their causation case to the greatest extent possible. All of us involved in the Omnibus Autism Proceeding would like to see it conclude as soon as possible, but it is also terribly important to give these families the chance to put on the best case they can. It is true that this process is taking longer than Congress ideally envisioned for most Program cases, but that is no one's fault; rather, the length of the process is simply the result of the fact that these cases involve novel and difficult scientific issues of medical causation (see

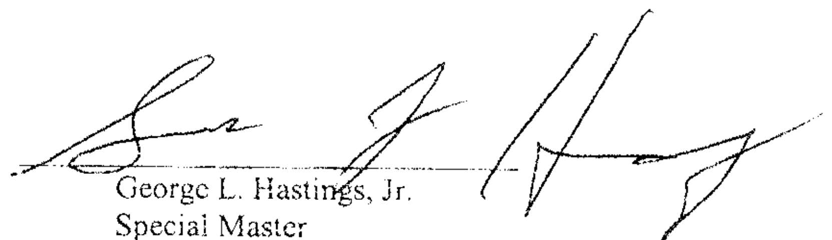
above at pp. 16-17, fn. 11). Congress clearly understood that some Program cases would take longer than the ideal, as shown by the fact that Congress gave each petitioner the option under § 300aa-21(b) of staying in the Program even after the initial time period for decision had expired. The fact is that over the history of the Program, many cases have taken longer to arrive at the final decision than the initial 240-day period, usually because the petitioners themselves needed more time to present their cases. But in almost every such case, the petitioner has elected to stay in the Program for whatever time it took to present the petitioner's case and receive a decision. In the Omnibus Autism Proceeding, I am committed to promptly resolving the general causation issue as soon as petitioners are ready to present their proof, and I anticipate that most of the autism petitioners, like other Program petitioners in the past, will elect to remain in the Program to await that resolution. And while it may turn out that some of the autism petitioners elect to exit the Program without waiting for that resolution, that is not a "loophole" in the Program, but is simply the option that Congress gave to petitioners. Moreover, as I have demonstrated above, petitioners would *still* be able to exercise that opt-out option even if the special masters had followed respondent's recommendations on *all* of the procedural issues decided in the *Autism General Order #1*, *Stewart I*, and *Stewart II*.

I acknowledge that respondent has presented reasonable arguments on these procedural issues, and the special masters have given full consideration to those arguments, though ruling otherwise. I hope, however, that at this point, with respondent's arguments having been raised and fully considered, we can now move *beyond* these procedural disputes, and direct all of our efforts instead to resolving the *merits* of these autism petitioners' substantive causation claims. To spend further time and effort on these procedural issues would, I think, be unfortunate and unproductive. We should work, instead, toward the goal of affording these autism petitioners a Program resolution of their substantive causation claims as soon as possible.

VI

CONCLUSION

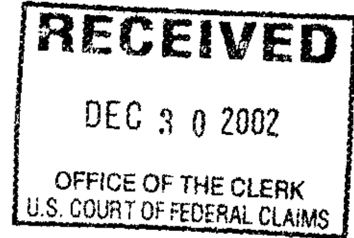
For the reasons stated above, the respondent's "Motion for Appropriate Relief" is hereby denied. Further, as previously noted, at petitioner's request I will continue to refrain from conducting case-specific proceedings in this case, pending the outcome of the Omnibus Autism Proceeding.



George L. Hastings, Jr.
Special Master

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 02-819V
(Filed: December 30, 2002)



* *

KIM STEWART, Parent of Heath Stewart, a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

* *

TO BE PUBLISHED

Ronald Homer, Boston, Massachusetts, for petitioner.
Vincent Matanoski, Department of Justice, Washington, D.C., for respondent.

ORDER DENYING MOTION TO DISMISS

HASTINGS, Special Master

This is an action in which the petitioner seeks an award under the National Vaccine Injury Compensation Program (hereinafter "the Vaccine Program" or "the Program").[1] Respondent has filed a motion seeking dismissal of the petition. For reasons to be stated below, I hereby deny that motion.

I

THE AUTISM CASES AND THE "OMNIBUS AUTISM PROCEEDING"

The respondent's dismissal motion in this case arises in the context of an unusual situation

---

[1]The applicable statutory provisions defining the Program are found at 42 U.S.C.§ 300aa-10 *et seq.* (2000 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2000 ed.). I also note that I will sometimes refer to the statute that enacted the Program as the "Vaccine Act."

involving multiple cases filed under the Vaccine Program that share a common issue of medical causation. Each of these cases involves an individual who suffers from a neurodevelopmental disorder known as "autism spectrum disorder"--"autism" for short--or a similar neurodevelopmental disorder. In each case, it is alleged that such disorder was causally related to one or more vaccinations received by that individual--*i.e.*, it is alleged that the disorder was caused by measles-mumps-rubella ("MMR") vaccinations; by the "thimerosal" ingredient contained in certain diphtheria-tetanus-pertussis ("DTP"), diphtheria-tetanus-acellar pertussis ("DTaP"), hepatitis type B, and hemophilus influenza type B ("HIB") vaccinations; or by some combination of the two. To date, nearly 1,300 such cases have been filed with this court, and many more filings (perhaps several thousand) are anticipated.

To deal with this large group of cases involving a common factual issue--*i.e.*, whether these types of vaccinations can cause autism--the Office of Special Masters (OSM) conducted a number of informal meetings with attorneys who represent many of the autism petitioners and with counsel for the Secretary of Health and Human Services, who is the respondent in each of these cases. At these meetings the petitioners' representatives proposed a special procedure by which the OSM could process the autism claims as a group. They proposed that the OSM utilize a two-step procedure: first, conduct an inquiry into the *general causation issue* involved in these cases-- *i.e.*, whether the vaccinations in question can cause autism and/or similar disorders, and if so in what circumstances--and then, second, apply the outcome of that general inquiry to the individual cases. They proposed that a team of petitioners' lawyers be selected to represent the interests of the autism petitioners during the course of the general causation inquiry. They proposed that the proceeding begin with a lengthy period of discovery concerning the general causation issue, followed by a designation of experts for each side, an evidentiary hearing, and finally a ruling on the general causation issue by a special master. Then, the general causation conclusions, reached as a result of the general proceeding, would be applied to the individual cases.

As a result of the meetings discussed above, the OSM adopted a procedure generally following the format proposed by the petitioners' counsel. On July 3, 2002, the Chief Special Master, acting on behalf of the OSM, issued a document entitled Autism General Order #1.[2] That General Order sets up a proceeding known as the Omnibus Autism Proceeding (hereinafter sometimes "the Proceeding"). In that Proceeding, a group of counsel selected from attorneys representing petitioners in the autism cases are in the process of obtaining and presenting evidence concerning the *general issue* of whether these vaccines can cause autism, and, if so, in what circumstances. The results of that general inquiry will then be applied to the individual cases. (Autism General Order #1 at 3 (2002 WL 31696785 at *3).)

---

[2]The Autism General Order #1 is published at 2002 WL 31696785 (Fed. Cl. Spec. Mstr. July 3, 2002). I also note that the documents filed in the Omnibus Autism Proceeding are contained in a special file kept by the Clerk of this court, known as the "Master Autism File." That file may be viewed at the Clerk's office, or viewed on this court's Internet website at www.uscfc.uscourts.gov/osm/osmautism.htm.

The Autism General Order #1 assigned the responsibility for presiding over the Omnibus Autism Proceeding to the undersigned special master. In addition, I have also been assigned responsibility for all of the individual Program petitions in which it is alleged that an individual suffered autism or an autistic-like disorder as a result of MMR vaccines and/or thimerosal-containing vaccines. The individual petitioners have agreed that, in general, no proceedings with respect to the *individual* petitioners will be conducted until after the conclusion of the Omnibus Autism Proceeding with respect to the *general* causation issue.[3] The OSM will then deal specifically with the individual cases.

II

ISSUE OF THE "SHORT-FORM" AUTISM PETITIONS

As noted in the Autism General Order #1 (p. 4; 2002 WL 31696785 at *2), during the meetings of the informal advisory group, the respondent's representatives did not oppose the petitioners' general plan, as set forth above, that the OSM first conduct a general inquiry into the causation question, then apply the conclusions reached in that inquiry to the individual cases. A difference of opinion did emerge, however, on one important procedural point, a difference which ultimately resulted in the motion at issue here.

The petitioners' representatives proposed that would-be petitioners who wish to elect into the Omnibus Autism Proceeding be permitted to file their Program petitions by filing very simple short-form "opt-in" petitions. Each such short-form petition, it was proposed, would consist basically of a petition form containing the names of the injured vaccinee and that vaccinee's parents or other representatives, and an agreement to opt into the Omnibus Autism Proceeding. By using the short-form petition, each petitioner would automatically be asserting that the vaccinee had suffered autism or a similar disorder as a result of MMR vaccinations and/or thimerosal-containing vaccinations. The short-form petition would not contain a detailed account of the relevant vaccinations and the history of the vaccinee's disorder, nor would it be accompanied by the medical records of the vaccinee's injury. Respondent's representatives indicated that they could not agree to this part of the petitioners' proposal, which would allow the filing of a "short-form" petition unaccompanied by medical records. They pointed to the statutory provisions calling for a Program petition to set forth a detailed account of the injury alleged, and contended that a petition must be filed along with all relevant medical records. *See* § 300aa-11(c).

The OSM noted this concern of respondent in the Autism General Order #1 (p. 7, fn.4), and then analyzed the concern in detail in a document filed on July 8, 2002, entitled "Discussion of Issue of Short-Form Petitions" (hereinafter "Discussion"). Like the Autism General Order #1, this

---

[3]I note that it is up to each individual petitioner to determine whether to defer proceedings concerning his own case pending the completion of the Omnibus Autism Proceeding. If an individual petitioner has proof of causation in his own case that he wishes to put before a special master at any time, that petitioner will be allowed to do so.

"Discussion" document was filed by the Chief Special Master on behalf of the OSM. The Chief Special Master acknowledged that the respondent was raising serious and important concerns, but, considering all the circumstances, concluded that it was appropriate to permit use of the short-form petitions. (Discussion at 2-4.)

After publication of the Autism General Order #1, many petitioners began to file short-form petitions as a way of simultaneously filing their Program petitions and indicating their agreement to stay proceedings in their own individual cases pending the completion of the Omnibus Autism Proceeding. As of November 30, 2002, more than 1100 short-form petitions or very similar petitions[4] had been filed. The petitioner in this case, Kim Stewart, filed a short-form petition on July 18, 2002. No medical records were filed with the petition, although petitioner's counsel also filed a "Motion for Issuance of Subpoena," requesting permission to utilize court subpoenas to obtain medical records pertaining to the autistic condition of petitioner's son, Heath Stewart. I issued an Order in this case on August 7, 2002, granting the subpoena request and confirming that, at petitioner's request, I would not conduct any case-specific proceedings in this case (unless requested by a party) until the completion of the Omnibus Autism Proceeding.

On August 15, 2002, the respondent filed a "Motion to Dismiss" (hereinafter "Motion") asserting that this petition should be dismissed because it was not accompanied by medical records or affidavits describing Heath Stewart's condition. Petitioner's counsel requested extensions of time for responding to the motion, so that counsel could consult with other attorneys representing autism petitioners before filing petitioner's response. Petitioner ultimately filed her reply to the motion ("Reply") on December 2, 2002, urging that I deny the motion to dismiss. Respondent filed a response memorandum ("Response") on December 5, 2002.

III

THE STATUTE DOES NOT REQUIRE THAT I DISMISS THIS PETITION

I have carefully considered respondent's arguments, but I conclude that, contrary to respondent's contentions, the statute does not require that I dismiss this petition. My reasoning will follow.

Respondent bases his motion chiefly upon those portions of the Vaccine Act which state that certain documents are to be filed with a Program petition. The Vaccine Act states that a petition "shall contain * * * an affidavit, and supporting documentation, demonstrating that" the petitioner qualifies for an award under Program. § 300aa-11(c)(1). The Act further states that certain types of medical records, such as prenatal, vaccination, and physician records, shall accompany the petition.

---

[4]More than 600 petitions have been filed using the "short-form" format as set forth in the Autism General Order #1, Ex. B; no medical records were filed with most of those petitions. In addition, one law firm has filed more than 500 petitions that are only slightly more detailed than the short-form version; those petitions also were filed without medical records.

§ 300aa-11(c)(2). Based on these provisions, respondent seems to argue that any petition that is not accompanied at the time of filing by all the records mentioned in § 300aa-11(c)(2) must therefore automatically be dismissed, for failure to comply with the statute. I find this argument to be wholly unpersuasive.

It is true that, as respondent points out, § 300aa-11(c) of the statute contemplates that, ideally, a Program petition will set forth all details of the vaccinee's injury, and be accompanied by all relevant medical records. As respondent notes, the instruction that a petitioner file a detailed petition with all relevant medical records was obviously designed to enable the special master to promptly evaluate and rule upon the claim. Throughout the history of the Program, the special masters have strongly urged that detailed petitions accompanied by all medical records be filed whenever possible. And in situations where such complete petitions have been filed, special masters have done everything possible to speedily evaluate and rule upon such petitions.

However, the history of the Program has also shown that the ideal is not achieved in every Program case. In a great many Program cases (probably a substantial majority) petitions have been filed with some medical records, but not all of those necessary for processing the case.[5] In such cases, the processing of the claim has been delayed for at least some period of time until the additional records could be obtained. Indeed, in a substantial number of cases--usually those in which the final allowable filing date under the statutory limitations period was approaching--petitions have been filed without *any* records at all; in some such cases the petitions have also contained very little description of the injury claimed, amounting to no more than a statement that a vaccinee was injured by a vaccination. In those situations, the processing of each case was delayed until all relevant records were obtained and the petitioner could specifically describe the alleged injury. This process sometimes has taken many months, and, in a few extreme cases in which it was very difficult to obtain medical records, even years.

Yet, in these situations, it has not been argued, by respondent or anyone else, that petitions that were not complete when filed should be summarily dismissed for that reason. In such situations, the special masters have generally urged that the necessary records be filed as soon as possible, but have afforded such petitioners the time needed to obtain and file records. Thus, for fourteen years--the entire history of the Program--failure to file all of the relevant medical records with a petition has never been considered reason to dismiss the petition. But now, for the first time, respondent proposes a new and extremely harsh interpretation of the statute. What has generated this startling change of statutory interpretation by respondent? Respondent does not tell us.

Of course, as respondent has pointed out (Response at 4), the fact that respondent has not sought in the past to dismiss petitions that were unaccompanied by medical records does not automatically mean that respondent's current motion is without merit. The proper question, as

---

[5]For example, petitioner's counsel, whose law firm has probably handled more Program cases on petitioners' behalf than any other firm over the past fourteen years, asserts that "in practice, vaccine petitions are almost never filed with complete supporting documentation."

respondent points out, is whether the statute requires dismissal in this case, even if, in answering that question, I were to conclude that all parties (including respondent) have been erroneously interpreting the statute for 14 years.[6] Addressing that question, I conclude that the statute does *not* require dismissal.

Respondent's memorandum's asserts that the issue involved in this motion is whether a special master in a Program case has authority to "amend or alter" the statute, or to "waive requirements" set forth in the statute or this court's rules. (Motion at 5, 7.) Of course, a special master has no authority to "amend," "alter," or "waive" statutory requirements. The question, rather, is whether any part of the statute *requires* that a petition *automatically be dismissed* if it is filed without the medical records necessary to fully evaluate the petition. Reading the statute as a whole, I conclude that the statute does *not* so require.

The short summary of my analysis is simply that there is nothing in the statute or the rules of this court indicating that when a Program petition is filed without medical records, it must *automatically* be dismissed. While the statute does state, as noted above, that the petition "shall" contain certain medical records, the statute and this court's rules are silent concerning what should happen in the event that a petition is filed without such medical records. The interpretation of the statute that has obviously been utilized by all of the special masters throughout the history of the Program is that, considering the statute as a whole, the presiding special master in each Program case has *discretion* to regulate the procedure in order to further the goals of the Program. That is, the interpretation has been that the special master has *discretion* to entertain petitions filed without all of the required documents, and to allow the petitioner to file at a later time any documents that were not filed with the petition.

The existence of such discretion is supported by the statutory description of the duties of special masters, contained at § 300aa-12(3)(B). That statutory section provides a special master presiding over a Program case with broad discretion in determining how to take evidence and to resolve the claim. It provides, *inter alia*, that the special master "may require such evidence as may be reasonable and necessary," "may require the submission of such information as may be reasonable and necessary," and "may require * * * the production of any documents as may be reasonable and necessary." § 300aa-12(d)(3)(B)(i), (ii), and (iii). The fact that this provision in general gives the special master such extremely broad discretion, in determining procedure in Program cases, provides implicit *general* support to the conclusion that Congress must have intended that a special master

---

[6] I note that in a number of *non-autism* Program cases petitions have been filed without medical records even since the date (August 15, 2002) on which respondent filed the dismissal motion in this case. In those cases, not only has respondent not filed any dismissal motions, but respondent's attorneys, to their credit, have often been helpful in such cases in assisting petitioners in obtaining and filing the necessary medical records. It is confusing to me how respondent's counsel can take the position in this case that I have no discretion to do anything but dismiss the petition, but in other cases in which petitions were filed without medical records, respondent *to this day* seems to have no objection to processing the cases.

have *discretion* in determining when, if ever, a petition should be dismissed for failure to supply the relevant medical records. Moreover, it is also important that the portions of § 300aa-12(d)(3)(B) quoted above *specifically* give the special master authority to "require * * * evidence," "require the submission of * * * information," and "require the production of * * * documents." These provisions, thus, *specifically* give the special master broad discretion to determine the *timing* of submission of evidence in a Program proceeding, which evidence obviously will nearly always include *medical records*. These provisions would seem to become meaningless if the statute required the immediate, automatic dismissal of any petition not accompanied by all of the records described in § 300aa-11(c).

A review of this court's *rules* also supports my conclusion that a special master has discretion whether or not to dismiss a petition that is unaccompanied by all specified medical records. This court has promulgated the "Vaccine Rules," which currently appear at Appendix B to the Rules of the United States Court of Federal Claims. Vaccine Rule 1 states that "[i]n all matters not specifically provided for by the Vaccine Rules, the special master * * * may regulate the applicable practice * * *." Vaccine Rule 3 provides that "[t]he special master shall determine the nature of the proceedings" in Program cases. Vaccine Rule 8 states that "[t]he special master in each case, based on the specific circumstances thereof, shall determine the format for taking evidence * * *." The Vaccine Rules, then, in giving the special master such extremely broad discretion over Program proceedings--*i.e.*, authority to "regulate the applicable practice," to "determine the nature of the proceedings," and to "determine the format" for taking evidence--also imply that a special master must have discretion whether or not to immediately dismiss a petition when it is filed without medical records.

Further, as petitioner has pointed out, a change in the Vaccine Rules adopted by this court seems to *specifically indicate* that a special master should not automatically dismiss a petition filed without medical records. That is, in the set of Vaccine Rules adopted by this court on January 18, 1990, Vaccine Rule 2 contained section (e)(4), which stated as follows:

> "Petitions not accompanied by all the documents required by statute and the Vaccine Rules, or an affidavit explaining why any missing required documents are unavailable, will not be filed by the Clerk."

That section (e)(4) of Rule 2, however, was, in practice, not enforced, to my knowledge. To the contrary, when for the first time a general revision of the Vaccine Rules was undertaken, section (e)(4) of Rule 2, as quoted above, was deleted. And in deleting that provision, the Rules Committee of this court explained the reason for the deletion as follows.

> The actual practice has been for the clerk to file any document that purports to be a petition, and then the respondent and/or the special master notifies petitioner if all

required records were not submitted. This approach is preferable to having the clerk reject petitions, which might result in missing the limitations period.[7]

Thus, the judges of this court acting collectively, in revising this court's rules, have explicitly rejected an interpretation of the Vaccine Act that would require rejection of a Program petition merely because it was not accompanied by medical records. This action by the judges of this court clearly offers support to the interpretation of the statute that I am adopting here.

I note further that the interpretation of the statute that I am adopting here does not disregard or ignore the provisions of § 300aa-11(c), described above, with regard to the filing of medical records and other supporting documentation. As respondent points out, the instruction contained in § 300aa-11(c), that a petitioner file a detailed petition accompanied by all relevant medical records, was obviously designed to enable the special master to promptly evaluate and rule upon the claim. And it seems likely that Congress expected that in most Program cases, the petitioner would be able to file the relevant records with the petition, and thereafter would be able to promptly present petitioner's theory of entitlement to the special master. However, Congress must have understood that in at least *some* cases the relevant medical records could not be filed along with the petition, and/or the petitioner would not be immediately ready to present the petitioner's proof of entitlement to the special master. Certainly Congress must have intended that in such cases the special master would have discretion to supervise the filing of evidence and the processing of the case in an orderly fashion appropriate to the circumstances. There is nothing in the statute or the legislative history to indicate that Congress intended that the special master would be required to *automatically dismiss* any case in which all relevant documents could not be filed with the petition. Therefore, I do not believe that my interpretation of the statute conflicts with the directives concerning the filing of affidavits and medical records contained in § 300aa-11(c).

Further, I am *not* claiming, as respondent suggests, the authority to "waive" or "amend" the requirement that the petitioner file the materials described in § 300aa-11(c). Of course, I would not purport to *resolve* this case without those materials. I conclude merely that a special master has discretion to *defer* the filing of such materials *to a later time*, in situations in which the overall circumstances of the case make such deferral seem appropriate.

Further, as petitioner has argued, respondent's interpretation of the statute, as requiring automatic dismissal of this petition, seems to be grossly inconsistent with the very purposes of the Program. Congress enacted the Program chiefly for the twin purposes of reducing tort litigation against vaccine manufacturers and administrators, as well as compensating individuals who may have been harmed by vaccinations. (See, *e.g.*, H.R. Rept. No. 99-908, 99th Cong., 2d Sess., pp. 3-7 (reprinted at 1986 U.S. Code Cong. & Admin. News 6344-6348).) Further, the Vaccine Act clearly seems to require that, as respondent himself agrees, all claims of the sort involved in the Omnibus

[7]"Notice of Proposed Changes to Appendix J of the Rules of Procedure (Vaccine Rules)," May 16, 2000, Page 4, Rules Committee Note to Rule 2(e)(4).

Autism Proceeding *must* be filed in the Vaccine Program.[8] *Leroy v. Secretary of HHS*, No. 02-392V, 2002 WL 31730680 (Fed. Cl. Spec. Mstr. Oct. 11, 2002). Given that the Vaccine Act *required* the autism petitioners to bring their claims to this court as Program petitions, how would it further the purposes behind the Program if I interpreted the statute to require that I immediately *dismiss* most of those petitions because they were not filed along with complete medical records? To the contrary, such an interpretation would clearly seem to *frustrate* the clear Congressional intent that these claims be adjudicated under the Program, and that such petitioners be given a chance in Program proceedings to demonstrate the merits of their claims.

In short, for all the reasons stated above, I must reject the respondent's argument that the Vaccine Act requires the automatic dismissal of this petition, or of any petition filed under the Program, merely because such petition was not accompanied by all of the materials listed at § 300aaa-11(c). Rather, I conclude that the statute, viewed as a whole, affords the special master with broad *discretion* to determine *when* a petitioner must file the required documents. I conclude that in an appropriate situation--for example, if the special master has repeatedly instructed a petitioner to supply documents but that petitioner has refused or failed to do so--a special master may dismiss a Program petition for failure to file the records mentioned at § 300aa-11(c). But the respondent's argument that the statute *requires* automatic dismissal *whenever* a petition is filed without those records is, in my view, without merit.[9]

IV

EXERCISE OF DISCRETION

As noted above, I conclude that I have *discretion* whether to dismiss this case. Of course, I will exercise that discretion in favor of *denying* respondent's motion to dismiss. The petitioner in this case submitted her petition in reliance on the statement in the Autism General Order #1 (p. 7; 2002 WL 31696785 at *6) authorizing the use of short-form petitions in autism cases. Further, the fact that no records have been filed as yet in this case certainly is not delaying resolution of the case in any way, since the petitioner and her counsel have elected to defer proceedings in this case

---

[8]Under the Vaccine Act, a claimant alleging injury from a thimerosal-containing vaccination or MMR vaccination may not sue a vaccine administrator or manufacturer without first bringing a Program claim. See *Leroy v. Secretary of HHS*, *supra*; § 300aa-11(a)(2).

[9]Respondent has also stated that the short-form petitions "raise a significant question regarding whether they are legally adequate to stop the running of the Vaccine Act's statute of limitations." (Motion at 5, fn.1.) I do not understand why there would be such a question. By filing the short-form petition, the petitioner is clearly naming a particular vaccinee, alleging that such vaccinee suffered autism or an autism-like disorder as a result of MMR vaccines and/or thimerosal-containing vaccines, and certifying that the petition is being timely filed. (See Autism General Order #1 at Exhibits A and B (2002 WL 31696785 at *7-8).) I do not understand how such a petition might fail to stop the running of the Vaccine Act's statute of limitations.

pending the completion of the Omnibus Autism Proceeding. I see no reason whatsoever to dismiss this petition.

V

I WILL NOT REQUIRE THE FILING OF RECORDS AT THIS TIME

As set forth above, I see no merit in the idea that I should dismiss the petition in this case. Indeed, the dismissal of this petition would seem to be such a harsh and unwarranted result that it is hard for me to believe that what respondent actually desires is that the petition be dismissed. I note that during the informal discussions that led to the Omnibus Autism Proceeding, discussions in which I participated, respondent's representatives argued that autism petitioners should be required to file detailed petitions accompanied by all medical records relevant to the vaccinee's condition. Perhaps what respondent's counsel actually wish me to do in this case--and in all of the autism cases involving short-form petitions or similar petitions--is not to *dismiss* the petition, but to order the petitioner to *supplement* the petition *at this time* with a detailed statement concerning the vaccinee's condition and copies of all related medical records. If that is actually what respondent seeks, then that request would strike me as a more reasonable request than respondent's stated assertion that I should *dismiss* the petition. Nevertheless, after careful consideration, I conclude that the Chief Special Master was correct when he determined, after consultation with other special masters, that it is appropriate to allow the autism petitions to be filed via short-form petitions, and to permit the filing of medical records in these cases to be deferred pending the completion of the Omnibus Autism Proceeding.

Initially, I acknowledge that the use of the short-form petitions in the autism cases has created a situation which is somewhat different from many situations in which, in the past, Program petitions have been filed without medical records. That is, in many cases over the history of the Program when incomplete petitions were filed, it was expected that the petitioners would move *expeditiously* to fill in the gaps in their petitions by supplying additional details and/or medical records. The procedure now being adopted in these autism cases, thus, is different, because the adopted procedure in the autism cases contemplates that in most of these cases the petitioners will not be required to supplement their petitions for many months, perhaps as much as two years. But this procedure is not wholly unprecedented. In late 1990 and early 1991, the Program was inundated with several thousand petitions filed at the end of the deadline for the so-called "pre-Act" cases involving vaccinations occurring prior to October 1, 1988. The system was unable to promptly and simultaneously process all those cases, and thus the cases were processed in a staggered fashion. At that time, the OSM did instruct many petitioners, whose cases could not be processed immediately, to delay filing their medical records until notified to so do. (*See* unnumbered General Order filed November 1, 1991.) As far as I am aware, neither the respondent nor anyone else argued at the time that that procedure, necessitated by a deluge of case filings in a short time period, was objectionable.

The Program now faces an influx of petitions that seems likely to rival, in numbers, the 1990-91 case filings. And as now constituted (six special masters currently in active service, a maximum

of eight authorized by statute), the OSM could not immediately analyze voluminous medical records in thousands of cases, even if requested to do so by petitioners. Moreover, the crucial factor is that the OSM is *not being requested* by petitioners to individually analyze the factual records in each of these cases at this time. The autism petitioners have requested, rather, that the OSM first conduct an inquiry into the *general causation issues*, and only *then* analyze the individual records if appropriate. In such circumstances--*i.e.*, petitioners do not want the OSM to analyze the individual case records at this time; the OSM does not currently have sufficient personnel to analyze the individual case records; the office of the Clerk of this court would be strained to accept and file the individual case records; and the individual records do not bear on the general causation issues to be decided in the Omnibus Autism Proceeding--I see no practical reason to require petitioners to file voluminous stacks of records in each individual case at this time.[10]

In this regard, respondent has stated that by permitting petitioners to refrain from initially filing medical records with their petitions, the OSM is guilty of "virtually guarantee[ing] that no statutory time goals will be realized in any of these cases." (Motion at 4.) This assertion is certainly misplaced. It is true, of course, that the statute states a time goal of 240 days for resolution of a Program claim (§ 300aa-12(d)(3)(A)(ii)), and that for the currently-filed autism cases that goal obviously will not be met. But, as respondent is well aware, the fact that we will not be able to meet the time goal in these cases clearly has nothing to do with the OSM's decision to allow short-form petitions. Rather, the delay is due to the fact that the *autism petitioners themselves* have requested an extended procedure in which we first engage in extensive discovery procedures, next explore the general causation issue, and only thereafter turn our attention to the individual cases. The goal of speedy resolution of Program petitions was obviously intended to benefit *petitioners*, not respondent. If the autism petitioners wish to utilize a relatively time-consuming procedure in order to give themselves the best chance of proving their cases, I see nothing wrong with that. And it should be quite clear that any delay in final resolution of these autism cases will result from the *petitioners' own choices* concerning how to pursue their cases, not from the OSM's decision to permit short-form petitions.

Respondent has also suggested that a reason for requiring more detailed petitions, and requiring medical records to be promptly filed in each autism case, would be to enable respondent's counsel to analyze each individual case to see whether the petition was *timely filed*, pursuant to § 300aa-16, which provides the deadlines for timely filing petitions. Respondent seems to suggest that in the event that the general causation issue is ultimately resolved in a way that would be favorable to some of the autism cases, then the processing of individual cases at that time might be speedier if the files in each case were already complete, and if the respondent had already been able to review each case to see if it was timely filed.

Again, there is some merit in the respondent's argument, but again, viewing the entire situation with an eye toward practicality, I agree with the decision reached by the Chief Special

---

[10]As petitioner's counsel points out (Reply at 7), in autism cases the medical and developmental records are likely to be quite voluminous.

Master, on behalf of the OSM, that there is no need for a rush to supply medical records in each case for this purpose. I agree with the reasoning of the Chief Special Master (see Discussion at 3-4) that it would make no sense for the OSM to begin a huge expenditure of time and effort toward determining whether individual autism cases were timely filed, prior to the completion of the Omnibus Autism Proceeding. There are several reasons for this conclusion.

First, the issue of whether any individual autism case was timely filed may very well prove to be *completely moot*. That is, if the Omnibus Autism Proceeding does not produce valid proof of causation that would apply to a particular case, and that particular petitioner is otherwise unable to demonstrate a causal link between the particular vaccinee's condition and a vaccination, then, as far as qualifying for compensation for the injury, it would be a moot point whether the petition was timely filed. Of course, the issue of timely filing might prove to be relevant to the issue of whether the petitioner would be entitled to an award for *attorneys' fees*.[11] However, in a particular case a petitioner might *never* seek an award for attorneys' fees. Therefore, any time spent by the parties or the special masters in autism cases concerning timeliness issues, prior to resolution of the general causation issues,[12] may prove to be a complete waste of time.

A second reason, in my view, involves the fact that there are currently pending before Congress proposals to modify § 300aa-16(a), which defines the period for timely filing a Program petition. Respondent's own representatives, I understand, have endorsed one such proposal, which would extend the filing period specified in § 300aa-16(a)(2) from 36 months after the onset of symptoms to 72 months after onset. Other pending proposals would provide an even lengthier time period for filing. Further, as I understand it, it appears not only possible, but *very likely*, that *some* kind of change in the limitations period will be enacted by the incoming Congress. Therefore, in this unusual situation in which a change to the applicable statutory provision is not only possible, but *seems likely*, it would seem to be an unfortunate waste of resources to expend extensive attorney and

---

[11]Under the Program a petitioner who fails to demonstrate entitlement to an award for an injury may nevertheless be granted compensation for attorneys' fees, if the petition was filed in good faith and with a reasonable basis in fact. (§ 300aa-15(e)(1).) However, it has been held that if the petition was not *timely filed*, the petitioner is ineligible even for an attorneys' fee award. See, *e.g.*, *Jessup v. Secretary of HHS*, 26 Cl. Ct. 350 (1992).

[12]To be sure, in many court proceedings, including Program cases, it is common to resolve "timely filing" issues *prior* to addressing the substantive merits of the case. But that procedure makes sense in many proceedings because resolving the timeliness issue in such a case may prevent the need for a lengthy trial concerning the substantive merits of the case. With respect to the autism cases, on the other hand, we will need to explore the *general* causation issues *in any event*, even if many individual cases were to be dismissed on timeliness grounds. Therefore, in terms of conserving the resources of both the parties and the OSM, it seems to make sense to delay spending time on individual timeliness issues, since the resolution of the general causation issue may make the timeliness issues moot.

special master time in grappling with timeliness issues in large numbers of autism cases, pursuant to a provision that is likely to be changed.

Third, I note that "timely filing" issues in autism cases have the potential to be far more complicated than timeliness issues in other types of cases, in or out of the Program. For example, autism seems to be a disorder with no dramatic and obvious onset, so that determining what was the "first symptom" of an autistic disorder is a question of fact that might be quite complex in many cases. Further, the causation theory in the autism cases seems to be that the vaccinee is injured by a *combined effect* of a number of different vaccinations. If that is so, then the statute-of-limitations issues become even more complex. For example, if a vaccinee was injured by a combination of vaccination A and vaccination B, then it may turn out that such vaccinee's petition was *not* timely filed with respect to the first symptom of the injury caused by vaccination A, but *was* timely filed with respect to the first symptom of the *additional injury* caused by the later-administered vaccination B. In other words, in the autism cases the issues of *timely filing* may be inextricably intertwined with resolving the *causation* issues. Therefore, this potential complexity of the timeliness issues with respect to the autism cases adds, in my view, another very strong reason for deferral of timeliness issues until the completion of the Omnibus Autism Proceeding.

Fourth, petitioner's counsel are still estimating that several thousand more autism cases are likely to be filed with this court in the coming months. If this occurs, and if I were to require detailed records to be provided with each petition at this time, it seems doubtful that respondent would have sufficient personnel available to analyze each case for potential timeliness issues. Further, even if respondent were able to analyze each case, and raised timeliness issues in a substantial number of cases, it would not be possible or desirable for the special masters to spend time resolving such timeliness issues. Recognizing the constraints of time and resources, I agree with the Chief Special Master that the special masters' efforts would best be dedicated to (1) resolving the general causation issues in the Omnibus Autism Proceeding, and (2) processing the many non-autism cases on each special master's docket. The parties' time and resources are likewise best allocated to those two tasks, rather than to addressing timeliness issues in autism cases that may prove to be moot.

In short, although I have given full consideration to the concerns raised by respondent, in the very unusual circumstances presented by these autism cases, with the likelihood of thousands of case filings in the upcoming months, I find it appropriate to continue to allow the filing of short-form autism petitions, and to allow the autism petitioners, if they wish,[13] to defer the filing of medical records to a later time.

VI

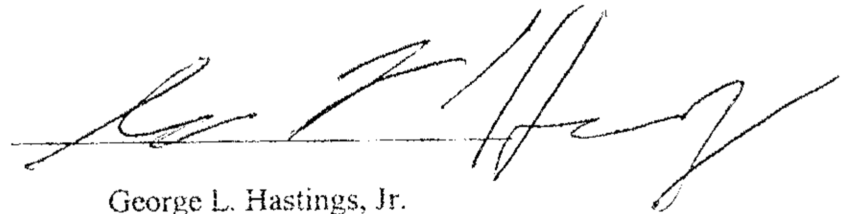
CONCLUSION

For the reasons stated above, the respondent's motion to dismiss this petition is hereby

---

[13] An autism petitioner, of course, may file a more detailed petition, and medical records, if the petitioner wishes to do so.

denied. As previously noted, at petitioner's request I will continue to refrain from conducting case-specific proceedings in this case, pending the outcome of the Omnibus Autism Proceeding.



George L. Hastings, Jr.
Special Master