OFFICE OF SPECIAL MASTERS

No. 02-838V

(Filed: November 26, 2003)

AMY CURRIE and DOUG HAMILTON, as parents and natural guardians of EDGAR HAMILTON,	*	
Petitioners,	*	**TO BE PUBLISHED**
v.	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	

John Hamilton, Melbourne, Florida, appeared for petitioners.
Linda Renzi, Department of Justice, Washington, D.C., appeared for respondent.

ORDER DISMISSING VACCINE ACT PETITION[1]

HASTINGS, ***Special Master.***

This is an action in which the petitioners filed a petition seeking an award under the National Vaccine Injury Compensation Program (hereinafter "the Program"[2]). The petitioners have since determined that they do not wish to prosecute this claim, and have stipulated with respondent that the petition should be dismissed. The issue is whether, in such circumstances, a "judgment" should be entered by the Clerk of this Court. For reasons to be set forth below, I conclude that a judgment should *not* be entered.

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[1]The Clerk of this Court is hereby instructed that this Order concludes proceedings "on the merits" of this Vaccine Act petition, but does not constitute a "decision" as that term is used in the Vaccine Act. **The Clerk shall not enter judgment**.

[2]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."

I

BACKGROUND

A. Procedural history of this case

The petition in this case was filed on July 16, 2002. Respondent filed a report disputing the claim on October 16, 2002. On December 6, 2002, petitioners filed a "Notice of Voluntary Dismissal." During discussion at an unrecorded telephonic status conference on January 10, 2003, however, petitioners requested that the notice be withdrawn, and I granted the request.[3] At another unrecorded telephonic status conference held on April 30, 2003, the parties informed me that they would soon *stipulate* to dismissal of the petition, pursuant to Vaccine Rule 21(a)(2).[4] On November 25, 2003, the parties filed such a stipulation. However, prior to the actual filing of the stipulation, on June 3, 2003, respondent filed a document, entitled "Joint Notice to Response," in which respondent argued that a "judgment" should not be entered in response to the stipulation to dismiss. That motion led to in the briefing process, to be described below, that has prompted the filing of this opinion.

B. Briefing of "judgments issue" in the Omnibus Autism Proceeding

This case is one of over 3,400 pending Program petitions involving claims that a condition known as "autism" was caused by one or more vaccinations. Those claims have been linked together in a proceeding known as the Omnibus Autism Proceeding. *See, e.g., Autism General Order #1*, 2002 WL 31696785 (Fed. Cl. Spec. Mstr. July 3, 2002). A committee of attorneys has been formed to represent the interests of the autism petitioners, known as the Petitioners' Steering Committee. During the Omnibus Autism Proceeding, it became clear that the issue of when "judgments" should be filed in Program cases would become important in many of the autism cases. Accordingly, I asked both the Petitioners' Steering Committee and the respondent to brief that issue, and a series of briefs were filed into the "Autism Master File," which constitutes the public record of the Omnibus Autism Proceeding. I placed those briefs into the record of this case by my Order dated November 13, 2003, and it is to those briefs which I will refer in the following pages.

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[3] On January 13, 2003, I signed, and sent to the Office of the Clerk of this Court for filing, an Order memorializing the action taken at the January 10 status conference. Inadvertently, however, that Order contained the wrong docket number and was not placed into the record of this case at that time. I later placed a copy of that Order into the record of this case attached to my Clarification dated November 12, 2003.

[4] The Vaccine Rules appear as Appendix B to the Rules of the United States Court of Federal Claims.

II

RESPONDENT'S ARGUMENTS

In general, respondent argues that "judgments" should not be entered every time a Vaccine Act case is concluded, but should be entered only in cases in which the special master *issued a final ruling* upon the issue of whether compensation is to be provided pursuant to a petitioner's claim, and that ruling contained "findings of fact and conclusions of law." According to this reasoning, if a petition is voluntarily dismissed by petitioner, the parties stipulate to dismissal, or the petition is withdrawn pursuant to § 300aa-21(b), then no "judgment" should be entered. Respondent offers two major arguments. First, respondent relies on the statutory language of § 300aa-12 that describes when "judgments and "decisions" are to be filed. Second, respondent makes an argument that the language of § 300aa-12 must be interpreted narrowly in the area of entering "judgments," in order to comport with the overall Congressional scheme for limiting tort suits against vaccine manufacturers and administrators.

A. Respondent's interpretation of § 300aa-12

The relevant statutory provisions appear at § 300aa-12. Generally, § 300aa-12(e) provides the primary statutory mention of the term "judgment," with § 300aa-12(d)(3)(A) describing the action--*i.e.*, a special master's "decision"--that triggers the judgment process.

First, § 300aa-12(e) provides for a "judgment" following the "decision" of a special master. The timing of the entry of judgment depends upon whether the special master's decision is appealed. That is, if no motion for review of a special master's decision is filed within 30 days, the statute requires the clerk to "enter judgment" immediately. § 300aa-12(e)(3). If, on the other hand, either party files a review motion, then a *judge* of the court may (A) uphold the special master's decision; (B) set that decision aside and file the court's own "findings of fact and conclusions of law;" or (C) remand the case to the special master. § 300aa-12(e)(1) and (2). Although, curiously, parts (1) and (2) of § 300aa-12(e) don't say anything specific about a "judgment" being entered after the judge's review, the implication of those provisions, in combination with part (3), is that, in a case in which the judge either upholds the special master's decision or substitutes the judge's own ruling, a "judgment" is then entered after the judge's review.

Section 300aa-12(e) seems to be the *only* statutory provision that describes the circumstances under which a "judgment" is to be entered in a Vaccine Act case.

The Vaccine Act also describes the special master's "decision," the issuance of which triggers the judgment process. The statute provides that the special master "shall issue a decision * * * with respect to whether compensation is to be provided under the Program and the amount of such compensation." § 300aa-12(d)(3)(A). In issuing that decision, the special master "shall * * * include findings of fact and

conclusions of law." *Id*. Such a decision "may be reviewed * * * in accordance with [§ 300aa-12(e)]." *Id*.

Accordingly, based upon the wording of § 300aa-12(d)(3) and § 300aa-12(e), respondent argues that a "judgment" is to be issued only after a "decision" pursuant to § 300aa-12(d)(3) has been filed by a special master. Further, respondent argues that only a ruling by a special master that "complies with § 300aa-12(d)(3)"--*i.e.*, a ruling that decides "whether compensation is to be provided and the amount of such compensation" and which "include[s] findings of fact and conclusions of law"--constitutes a "decision" pursuant to § 300aa-12(d)(3). For example, respondent argues that when a petitioner voluntarily dismisses his own petition as a matter of right pursuant to Vaccine Rule 21(a) (*i.e.*, *prior* to the respondent's report in the case), or the parties jointly stipulate to dismissal, no "judgment" should be entered. (Resp. Br. filed 7-30-03, pp. 3-4.)

Respondent initially also argued that a special master's dismissal of a petition for *failure to prosecute* would not constitute a "decision" under § 300aa-12(d)(3), because such a ruling would supposedly not "address * * * whether compensation should be awarded," and would not contain findings of fact and conclusions of law. (Resp. Br. 7-30-03, pp. 5-6.) However, the respondent later clarified that if a special master's dismissal for failure to prosecute sets forth findings of fact and conclusions of law, and concludes that compensation should not be awarded, then such a dismissal *would* constitute a "decision" pursuant to § 300aa-12(d)(3)(A). (Resp. Br. filed 10-30-03, pp. 1-2.)

B. Respondent's argument concerning the policy of limiting tort suits

The other argument of respondent is that the language of § 300aa-12 must be interpreted strictly, with respect to the issue of when "judgments" are to be entered, in order to comport with the overall Congressional scheme behind the Vaccine Act for restricting tort suits against vaccine manufacturers and administrators. Respondent points out that the Vaccine Act affects the jurisdiction of state and federal trial courts over vaccine-related claims that were initially required to be brought under the Vaccine Act. Respondent notes that one section of the Vaccine Act specifically limits that jurisdiction to instances where there is "Authority to bring actions." § 300aa-21. That section provides only two methods for a petitioner to conclude proceedings under the Vaccine Act, while preserving the option to file a civil action against a vaccine manufacturer or administrator. One option consists of a time deadline after which a petitioner may withdraw from the Vaccine Act proceeding, after notice that the statutory time for a decision has elapsed. § 300aa-21(b). The other allows a petitioner to reject a "judgment" of the Court of Federal Claims and thereafter file a civil action. § 300aa-21(a). Respondent argues that because Congress used the entry of "judgment" on a Vaccine Act claim as one boundary of the jurisdiction of trial courts over civil actions, it is critical that such "judgments" are only entered under the circumstances specifically provided in the Act. Specifically, respondent argues, the Clerk of the Court of Federal Claims is without authority to enter a "judgment" in the absence of a "decision" meeting the requirements of § 300aa-12(d)(3). Respondent argues that if the Court of Federal Claims disposes of a Vaccine Act petition "through methods that do not meet the requirements of section 12(d)(3)" (Br. 7-30-03 at 9), no "judgment" should issue in such case.

In this regard, respondent relies heavily upon a specific example of the way in which the inappropriate issuance of a "judgment" could adversely impact the Congressional scheme behind the Vaccine Act. Respondent notes that "if a judgment were to issue after a voluntary dismissal, a petitioner would simply have to file the petition, immediately dismiss it, and then reject the ensuing judgment, thereby entirely circumventing Vaccine Act proceedings and frustrating the Congressional goal of resolving vaccine injury claims through proceedings under the Act." (Br. 7-30-03, p. 9.) Under this scenario, the petitioner would inappropriately exit the Program with a "judgment" without having a special master evaluate the claim, or even having to wait for the 240-day period set forth at § 300aa-12(d)(3)(A). Respondent points to the observation of the U.S. Court of Appeals for the Federal Circuit that the Vaccine Act should be interpreted to implement Congress' "strong bias in favor of bypassing the civil litigation route in favor of compensation claims under the Act." *Amendola v. HHS*, 989 F. 2d 1180, 1184 (Fed. Cir. 1993). Therefore, respondent urges, the Vaccine Act should be construed so as not to create additional means to avoid proceedings under the Act beyond those that Congress explicitly identified.

III

RESPONSE OF PETITIONERS' STEERING COMMITTEE

The briefs of the Petitioners' Steering Committee, in general, do not take issue with the respondent's arguments. The Committee's major cautionary note is that it should be clear that petitioners can receive an *ancillary* award for attorneys' fees and costs, pursuant to § 300aa-15(e), even in the absence of a "judgment." On this point, respondent has specifically so conceded, in the respondent's Response filed in *this case* on July 16, 2003.

IV

EVALUATION OF RESPONDENT'S ARGUMENTS

In general, I find the respondent's arguments to be persuasive. Undoubtedly, the statutory provisions quoted above do imply that a "judgment" properly follows only after a special master's "decision;" the statute also specifies that a "decision" is a document in which a special master addresses "whether compensation is to be provided under the Program and the amount of such compensation," and that a decision "shall include findings of fact and conclusions of law." § 300aa-12(d)(3)(A).

Further, respondent's above-described policy argument seems correct as well. It would certainly seem to contravene the Congressional intent if a party could file a petition, voluntarily dismiss it the next day, and receive a "judgment" that would entitle the party to then file a civil action against a vaccine manufacturer or administrator. Congress certainly seems to have intended that a petitioner either get an evaluation of the merits of petitioner's claim in the form of a special master's "decision," or at least wait out the 240-day period, specified in § 300aa-12(d)(3)(A)(ii), before being authorized to withdraw from the Program under § 300aa-21(b).

Moreover, as far as the *rules* of this Court are concerned, I conclude that they are consistent with respondent's argument. The "Vaccine Rules" of this Court that govern Vaccine Act proceedings, contained at Appendix B of this Court's rules, provide for "judgment" to be entered either 30 days after a special master's "decision" if the master's decision is not appealed (Vaccine Rule 11(a)), or after a judge's review (Vaccine Rule 30(a)). The rules do not seem to provide for "judgment" to be entered in any other situation. Thus, the court's rules also seem to be consistent with respondent's argument.

V

PRIOR COURT PRACTICE

It appears that, in general, the practice of the Clerk of this Court has been in the past to enter a "judgment" at the conclusion of each Vaccine Act proceeding, even after a voluntary dismissal or stipulated dismissal pursuant to Vaccine Rule 21(a), or after a petitioner's withdrawal pursuant to § 300aa-21(b). This practice, however, was not mandated by statute, court rule, or any other formal directive. It simply appears that, until recently, no one gave this practice any significant consideration. Therefore, I do not find that the past practice offers any significant authority or precedent concerning what the *future* practice of this Court should be.

VI

PROCEDURE THAT I AM ADOPTING

In light of the foregoing, my conclusion is that it is appropriate that I adopt a new policy concerning when "judgments" are, or are not, to be entered. I conclude that a "judgment" should be entered only after a special master files a "decision" that complies with § 300aa-12(d)(3)(A)--*i.e.*, a ruling that decides "whether compensation is to be provided and the amount of such compensation," and which "includes findings of fact and conclusions of law." For example, when a voluntary dismissal or a stipulation for dismissal is filed pursuant to Vaccine Rule 21(a), or when a petitioner withdraws from the Program under § 300aa-21(b) after receiving a formal notice pursuant to § 300aa-12(g)(1), the special master should file some type of order or notice that merely acknowledges the dismissal or withdrawal, and notifies the Clerk of the Court that the proceedings "on the merits" of the petition[5] are concluded. The order or notice should specify that the document does *not* constitute a "decision," and that the Clerk of the Court should *not* enter a "judgment." This is the approach that I intend to take in my cases.

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[5]Ancillary proceedings concerning an application for *attorneys' fees and costs*, pursuant to § 300aa-15(e)(1), of course, could still take place in a case when appropriate. As noted above, the respondent has acknowledged, and I agree, that an award for fees and costs may be appropriate in some cases even though no "judgment" is entered.

VII

CONCLUSION

For the reasons stated above, this petition is hereby DISMISSED, pursuant to the parties' stipulation for dismissal. The Clerk of this Court is hereby instructed that this Order does not constitute a "decision" as that term is used in the Vaccine Act, but does conclude proceedings "on the merits" of this Vaccine Act petition. ***The Clerk shall not enter judgment***.

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George L. Hastings, Jr.
Special Master