

OFFICE OF SPECIAL MASTERS

No. 04-1220V

Filed: May 24, 2005

ZSUZSA TOROK,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES

Respondent.

Not for publication.

To be posted on court website.

DECISION¹

HASTINGS, Special Master

This is an action seeking an award under the National Vaccine Injury Compensation Program (hereinafter "the Program").² Respondent filed a motion contending that this petition was untimely filed, and therefore should be dismissed. After two extensions of time, the petitioner did not respond. For the reason set forth below, I conclude that respondent's contention is correct, and I hereby dismiss this petition.

I

BACKGROUND

A. The petitioner's claim

This petition was filed on July 7, 2004, by the petitioner, Zsuzsa Torok. The petition alleged that petitioner received certain vaccinations on April 5, 2001, and suffered severe food allergies as a result thereof, beginning with a skin rash on or about April 16, 2001.

¹This document constitutes my final "decision" in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of this Court shall enter judgment in accord with this decision.

Also, the petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4), Rule 18(b)(2) of the Vaccine Rules of this Court, and the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), this decision will be made available to the public unless petitioner files, within fourteen days, an objection to the disclosure of any material in this decision that would constitute "medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy."

²The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 et seq. (2000 ed.). Hereinafter, all " § " references will be to 42 U.S.C. (2000 ed.).

B. Applicable statutory provision

Under the Program, compensation awards are made to individuals who have suffered injuries after receiving certain vaccines listed in the statute. The statutory deadlines for filing Program petitions are provided at § 300aa-16. With respect to vaccinations administered after October 1, 1988, as were the vaccinations at issue here, § 300aa-16(a)(2) provides that a Program petition must be filed within "36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury."

II

DISCUSSION

As noted above, § 300aa-16(a)(2) requires that a Program petition that alleges injury by a vaccination that was administered after October 1, 1988, must be filed within 36 months after the date of the first symptom of the onset of the injury in question, or within 36 months of the first symptom of a "significant aggravation" of an injury. I conclude that the petition in this case was *not* timely filed.

The petition itself asserts that the first symptom of the petitioner's food allergies occurred on April 16, 2001, in the form of a skin rash. (Petition, para. 5.) Further, the medical records filed by petitioner also indicate that the skin rash of April 16, 2001, was the first symptom of her food allergies. The petition, however, was not filed until July 26, 2004, some thirty-nine months later. Therefore, I am forced to conclude that respondent is correct: the first symptom of petitioner's injury occurred more than thirty-six months prior to the filing of the petition, so that the petition was not timely filed.

III

CONCLUSION

Based upon the records filed in this case, it appears that Zsuzsa Torok suffers from an unfortunate condition. Unfortunately, however, the records also indicate that this petition was not filed within the deadline specified by Congress. Accordingly, I hereby DISMISS this petition because it was not timely filed.³

George L. Hastings, Jr.
Special Master

³In the absence of a timely-filed motion for review of this petition, the Clerk of this Court shall enter judgement accordingly.