

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MONICA and SCOTT MATTIAS, *
Parents of *
ALEXANDER SCOTT MATTIAS, a minor *
Petitioners, *

No. 02-1710V
Special Master Christian J. Moran

v. *

Filed: January 22, 2010

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
Respondent. *

autism, statute of limitations

Shawn Khorrami and Bahar Dejban, Khorrami Pollard & Abir, LLP, Los Angeles, CA., for petitioners;
Ryan D. Pyles, United States Dep't of Justice, Washington, D.C. for respondent.

PUBLISHED DECISION DISMISSING PETITION FOR LACK OF TIMELINESS*

Monica and Scott Mattias allege that various vaccines caused their son, Alexander, to develop autism. They seek compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (2006). However, Mr. and Ms. Mattias filed their petition after the period of time for filing a petition expired. Therefore, the petition is DISMISSED.

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

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

I. Factual and Procedural History

The relevant factual events are not disputed. Alexander was born in October 1997. Pet'r Exhibit A at 1.

When Alexander was approximately 18 months old, his parents were concerned that he was not speaking. Pet'r Exhibit E at 62, 9; Pet'r Exhibit G at 95.

The operative date for determining whether the petitioners filed the case within the time provided by the statute of limitations is November 25, 1999. See 42 U.S.C. § 300aa-16(a)(2).

In September 2001, Alexander was diagnosed as having mild autism. Exhibit G at 77-78. Information about Alexander's development after he was diagnosed with autism is not relevant to determining the timeliness of the petition.

The petitioners filed their short-form petition on November 25, 2002. They did not file any medical records with their petition. When this petition was filed, the Office of Special Masters was attempting to manage the numerous petitions that were claiming various vaccines caused autism. A history of these efforts is provided in Cedillo v. Sec'y of Health & Human Servs., No. 98-916V, 2009 WL 331968, at *7 (Fed. Cl. Spec. Mstr. Feb. 12, 2009), motion for review denied, 89 Fed. Cl. 158, 182 (2009), appeal docketed, No. 2009-5004 (Fed. Cir. Oct. 7, 2009).

The petitioners's case resumed in 2008, when a special master ordered the petitioners to file medical records. The petitioners filed exhibits A - F on May 14, 2008.¹ Petitioners later presented additional factual information about Alexander. In informal status conferences, the parties discussed whether the petition was filed within the time permitted by the statute of limitations.

Respondent filed a report from Dr. Peter M. Bingham. He stated that Alexander first displayed symptoms of autism when he was 17 months old (or March 1999). Resp't Exhibit A at 3. Based upon this report, respondent maintained that the petition was not filed within the time permitted by the statute of limitations.

Petitioners requested and were granted an opportunity to evaluate Dr. Bingham's report. Order, filed Sept. 2, 2009. Eventually, petitioners filed a status report stating that they "are unable to submit an expert report disputing the findings in Respondent's report." Pet'r Status Rep't, filed Nov. 9, 2009.

¹ Usually, petitioners label their exhibits with numbers, not letters.

II. Analysis

For cases in the Vaccine Program, the statute of limitations requires a petition to be filed within 36 months “after the date of the occurrence of the first symptom or manifestation of onset . . . of such injury.” 42 U.S.C. § 300aa–16(a)(2).

On this point, the only direct evidence is Dr. Bingham’s report. Dr. Bingham’s report concludes that Alexander displayed a symptom of autism when he was 17 months old. Resp’t Exhibit A at 3. Dr. Bingham cited three articles in support of his opinion. Resp’t Exhibits C - E.

Here, the petitioners have not presented a report from an expert who disagreed with Dr. Bingham, that is, an expert who believes that Alexander’s delay in speaking, which was noticed at 17 months, was not a manifestation of Alexander’s autism. Although Dr. Bingham’s unrebutted report is not necessarily probative, Applied Medical Resources Corp. v. United States Surgical Corp., 147 F.3d 1374, 1379 (Fed. Cir. 1998); Dr. Bingham’s report is persuasive.

A preponderance of the evidence supports a finding that Alexander’s delay in speaking, which was observed when he was 17 months, constitutes a manifestation of his autism. This finding means that the time for filing a petition began no later than April 1999. Pursuant to 42 U.S.C. § 300aa–16(a)(2), the petitioners were required to file their petition within 36 months, that is, by April 2002. They did not. Therefore, the petition must be dismissed.

III. Conclusion

The evidence demonstrates that Alexander experienced the “first symptom or manifestation of onset” of autism more than 36 months before the petitioners filed their petition. Therefore, the petition was not filed within the statute of limitations. Therefore, the statute of limitations bars recovery. The petition is DISMISSED.²

IT IS SO ORDERED.

S/ Christian J. Moran
Christian J. Moran
Special Master

² When a petition is filed outside the time permitted by the statute of limitations, the Court of Federal Claims lacks subject matter jurisdiction to entertain the action. Without subject matter jurisdiction, special masters may not award attorneys’ fees and costs. Brice v. Sec’y of Health & Human Servs., 358 F.3d 865, 868 (Fed. Cir. 2004); Kay v. Sec’y of Health & Human Servs., 80 Fed. Cl. 601, aff’d without decision, ___ F.3d ___, 298 Fed. Appx. 985 (Nov. 10, 2008), cert. denied, ___ U.S. ___, 129 S.Ct. 1933 (2009).