

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-580V

November 6, 2009

Not to be Published

HEATHER RALSTON, on behalf of *

BRADLEY RALSTON, her son, *

*

Petitioner, *

*

v. *

Decision dismissing petition
for failure to file within statute
of limitations

*

SECRETARY OF THE DEPARTMENT OF *

HEALTH AND HUMAN SERVICES, *

*

Respondent. *

*

Heather Ralston, Marysville, WA, for petitioner pro se.

Ann D. Martin, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

On September 2, 2009, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that her son Bradley Ralston (hereinafter, “Bradley”) sustained an unspecified injury from an unspecified vaccination administered in June

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that 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 constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioners have 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

2005. Petitioner filed some medical records with her petition, showing that she had brought her son Bradley to Mill Creek Walk-In Clinic on June 4 and 5, 2005 for days of fever and a urinary tract infection.

On November 5, 2009, the undersigned held a Rule 4(b) Conference with the pro se petitioner and respondent's counsel. Petitioner stated that the vaccination occurred before the Mill Creek Walk-In Clinic visits in June 2005. Respondent raised the defense of the statute of limitations. The undersigned explained to petitioner that the Vaccine Act requires that petitioners file their petitions within 36 months of the onset of the vaccine injury. Since petitioner filed the petition four years and three months after the onset of Bradley's alleged vaccine injury, the undersigned has no subject matter jurisdiction in this case and must dismiss it.

DISCUSSION

The United States is sovereign and no one may sue it without the sovereign's waiver of immunity. United States v. Sherwood, 312 U.S. 584, 586 (1941). When Congress waives sovereign immunity, courts strictly construe that waiver. Library of Congress v. Shaw, 478 U.S. 310 (1986); Edgar v. Secretary of HHS, 29 Fed. Cl. 339, 345 (1993); McGowan v. Secretary of HHS, 31 Fed. Cl. 734, 740 (1994); Patton v. Secretary of HHS, 28 Fed. Cl. 532, 535 (1993); Jessup v. Secretary of HHS, 26 Cl. Ct. 350, 352-53 (1992) (implied expansion of waiver of sovereign immunity was beyond the authority of the court). A court may not expand on the waiver of sovereign immunity explicitly stated in the statute. Broughton Lumber Co. v. Yeutter, 939 F.2d 1547, 1550 (Fed. Cir. 1991).

Section 300aa-16(a)(2) states that “if a vaccine-related injury occurred as a result of the administration of [a vaccination after October 1, 1988], no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury....”

Since Bradley’s alleged injury occurred four years and three months before petitioner filed the petition, the undersigned has no subject matter jurisdiction over the petition and must dismiss it with prejudice.

CONCLUSION

The petition is dismissed with prejudice for failure of petitioner to file within the statute of limitations. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court is directed to enter judgment herein.²

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party’s filing a notice renouncing the right to seek review.