

and that she had received a Hepatitis B vaccination on September 17, 1999 and a varicella vaccination on September 28, 1999. Pet. Ex. 2, p. 2. Also filed on March 11, 2002 was a “Statement of Completion,” in which her attorney indicated that all supporting documentation had been filed.

In the report pursuant to Vaccine Rule 4(b),⁴ respondent argued that the petition and supporting documentation failed to establish causation in fact because there was no evidence that either vaccine had caused petitioner’s CFS. Respondent’s Report, p.12-13. Respondent also requested that petitioner file “all the records associated with her worker’s compensation claim.” *Id.* at 6, n.1.

Petitioner filed responsive documents on August 26, 2002, consisting of a letter from the worker’s compensation administrator at petitioner’s place of employment and a report by petitioner regarding her worker’s compensation claim. Pet. Response to Respondent’s Request for Additional Information and Pet. Ex. 11. The documents indicated that petitioner had contracted varicella⁵ from the varivax (varicella) vaccination she had received on September 28, 1999, but had not received any benefits other than her regular wages while recuperating.

On June 24, 2002, at the apparent request of petitioner’s counsel,⁶ Chief Special Master Golkiewicz granted an indefinite stay in this case. Order, dated June 24, 2002. On October 18, 2002, the Chief Special Master suspended proceedings for a period of 180 days, pursuant to Vaccine Rule 9(a). Order, dated October 18, 2002. On May 13, 2003, the Chief Special Master issued formal notice to petitioner, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A)(ii), of her right to withdraw her petition. As petitioner took no action on this notice, she was deemed to have elected to remain in the Program.

Three days later, petitioner’s case was transferred to Special Master Margaret Sweeney, and it apparently remained stayed until July 9, 2004 when Special Master Sweeney held a status conference. An order dated July 14, 2004 summarized what transpired. Petitioner’s counsel reported that he had been unable to find an expert to opine that the vaccines petitioner had

⁴RCFC Appendix B.

⁵Varicella is commonly referred to as “chicken pox” and is a highly infectious disease characterized by vesicular skin lesions. Dorland’s Illustrated Medical Dictionary, 30th Ed. (2003) at 346. Ms. Monez apparently experienced the skin rash, accompanied by fever and flu-like symptoms approximately two weeks after her varicella vaccination. Pet. Ex. 11, p. 3. There is no evidence she suffered any residual effects from varicella and nothing in the record links varicella to CFS.

⁶The record does not contain any written request for a stay in this case, but the order references status conferences in other Hepatitis B cases involving petitioner’s counsel of record.

received were the cause of her CFS⁷ and that he had explained that to petitioner on October 10, 2003. During that conversation, she expressed interest in proceeding *pro se*, but wanted to consider the matter further. When he attempted to contact her again on February 11, 2004, her telephone number was no longer in service. His subsequent attempts to contact her by mail were unsuccessful. The order notes:

Petitioner's counsel requested this status conference to discuss how the court preferred to proceed in this case, as counsel did not believe a withdrawal was appropriate at this time. After some discussion, it was decided that petitioner's counsel shall attempt to locate his client using two methods. First, counsel will conduct an electronic search for his client's address and/or phone number, utilizing the Internet (e.g., Google, Yahoo!) or other electronic means (e.g., LexisNexis, Westlaw). Second, counsel will contact the United States Post Office in an attempt to ascertain a forwarding address.

Order, dated July 14, 2004. A subsequent status conference was to be scheduled by September 30, 2004.

The case file does not reflect that this status conference was ever held. On August 9, 2004, petitioner's counsel filed a motion to withdraw as petitioner's representative. Respondent did not oppose the withdrawal, and Special Master Sweeney granted the motion on August 20, 2004. Special Master Sweeney directed the clerk's office to serve a copy of her order granting the motion to withdraw on both petitioner and petitioner's counsel. She also directed petitioner's counsel to serve petitioner with a copy of the order. *See* Order, dated August 20, 2004.

There was no further action in this case for nearly a year. On July 7, 2005, Special Master Sweeney ordered petitioner or any newly retained counsel for petitioner to contact the court by August 12, 2005 to schedule a status conference. The case file does not reflect any response to this order.

Special Master Sweeney was appointed to the Court of Federal Claims on October 24, 2005, and petitioner's case was reassigned to me on February 8, 2006. On May 1, 2006, I ordered petitioner to show cause why this case should not be dismissed for failure to comply with court orders and failure to substantiate the petition for compensation. I set a deadline of June 1, 2006 for petitioner to respond.⁸ *See* Order, dated May 1, 2006. In spite of the fact that petitioner

⁷Whether petitioner can make a prima facie showing of causation is not in issue; this is not a ruling on the record as it now stands. This decision is an involuntary dismissal of petitioner's case for compensation based on her failure to comply with court orders.

⁸Concurrently with this order of dismissal, I am directing the filing into the record a LexisNexis SmartLinx search reflecting petitioner's current address and a copy of the certified mail receipt sent to that address containing what appears to be petitioner's signature.

signed a certified mail document acknowledging receipt of the court's order of May 1, 2006, no response has been received by the court.

DISCUSSION

When a petitioner fails to comply with any order of the court, the special master may dismiss the claim with prejudice. R.C.F.C. Appendix B, Rule 21(c); *see also Wallace v. Sec'y, HHS*, 2003 WL 23218075 (Fed. Cl. Spec. Mstr. Nov. 21, 2003). Petitioner failed to comply with Special Master Sweeney's 2005 order to contact the court to schedule a status conference. She also failed to comply with my order of May 1, 2006 to show cause why this case should not be dismissed. It appears that October 2003 was the last time her former counsel of record or this court had any contact with petitioner. *See* Order dated July 14, 2004.

While courts must construe the content of *pro se* filings liberally, *see, e.g., Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), the problem here is that petitioner has made no filings at all since the withdrawal of her former attorney from the case almost two years ago, despite court orders to contact the court or make a filing. While *pro se* litigants are often granted considerable latitude in the manner in which they present their cases, they must still comply in some fashion with court orders and rules in order for their case to be presented at all. Furthermore, the fact that petitioner signed a certified mail receipt delivered to the same mailing address as earlier orders leads this court to conclude that petitioner's failure to respond to her former counsel and to the orders of this court was willful.

In *Sapharas v. Sec'y, HHS*, 35 Fed. Cl. 503 (1996), Judge Tidwell upheld a dismissal of a petition for compensation under the program for failure to comply with an order of the Chief Special Master and a failure to substantiate the claim. *See also, Tsekouras v. Sec'y, HHS*, 26 Cl Ct. 439 (1992), *aff'd*, 991 F.2d 810 (Fed. Cir. 1993) (vaccine case dismissed for failure to prosecute when petitioner wilfully ignored court orders to substantiate the petition). The Court of Federal Claims has held a *pro se* petitioner to strict compliance with procedural rules, dismissing a motion for review filed outside the 30 day time limit. *See Baker v. Sec'y, HHS*, 61 Fed. Cl. 669 (2004). In an unpublished opinion, *Hayman v. U.S.*, Judge Futey upheld the dismissal of a petition under the Program when petitioner failed to file an expert report within the time frame established in the special master's order. *See Hayman v. U.S.*, No. 02-725V, slip. op. at 8 (Fed. Cl. June 1, 2005) (unpublished) (available at <http://www.uscfc.uscourts.gov/unpublished%20decisions.htm>)

CONCLUSION

As petitioner has failed to contact the court to schedule a status conference as ordered by Special Master Sweeney, and has failed to comply with my order to show cause why her case should not be dismissed, this petition for compensation is DISMISSED WITH PREJUDICE. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment accordingly. A copy of this decision shall be served on Mr. Ronald Homer,

petitioner's former attorney of record, who may make timely application for attorney's fees and costs, pursuant to § 300aa-15(e).

IT IS SO ORDERED.

Denise K. Vowell
Special Master