

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-120V

Filed: April 22, 2008

NOT TO BE PUBLISHED

DONALD TOBIN AVANT and *
MARGARET MORGAN AVANT, *
parents and natural guardians of *
ELLA GRIER AVANT, a minor , deceased *

Petitioners, *

Dismissal; Statutory filing
time frame of 24 months from date
of death not met

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

DECISION¹

A petition was filed on February 29, 2008 in the above-captioned matter on behalf of petitioners' minor daughter, Ella Grier Avant. The petition alleges that Ella Grier Avant suffered a vaccine-related death on March 2, 2005. Thus, petitioners filed their claim nearly three years after Ella's unfortunate death. However, section 16 of the Vaccine Act provides that "if a death occurred as a result of administration of such vaccine, no petition may be filed for compensation under the Program for such death after the expiration of 24 months from the date of the death..." See 42 U.S.C.A. § 300aa-16(a)(3). The Court of Appeals for the Federal Circuit, whose decisions are binding on the Special Masters, makes clear that the Act's filing time frame is a

¹The undersigned 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). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

hard and fast rule; the court is without power to extend the filing period. See Brice v. Secretary of HHS, 240 F.3d 1367, 1368 (Fed. Cir. 2001). Accordingly, Brice clearly states that equitable tolling of the Vaccine Act's filing provisions is not applicable to Vaccine Act cases.

In summary, this petition was filed after the statutory period, which is 24 months from the date of death. Petitioners do not argue to the contrary. Accordingly, this claim is **dismissed**. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master