

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-0610V

Filed: April 4, 2008

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TONYA DIXON,  
Parent of JARVIS WHEATON

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES

Respondent.

Autism; Statute of Limitations;  
Untimely Filing

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*Thomas A. Albritton, Andalusia, AL, for petitioner.*

*Lynn Ricciardella, United States Department of Justice, Washington, DC, for respondent.*

**DECISION**<sup>1</sup>

The above-named petitioner filed a Short-Form Autism Petition For Vaccine Compensation on August 16, 2007, as well as some medical records. It appeared to the court after an initial review of the aforementioned medical records filed that there was an issue

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<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ 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.

regarding whether the instant petition was filed within the statutorily mandated time period.<sup>2</sup>  
The undersigned advised petitioner by Order that

[t]he records filed in the instant case indicate that Jarvis experienced his “first symptom or manifestation of onset” of his alleged vaccine related injury in 1988. Petitioner filed the petition in this case on August 16, 2007, thus it would appear to the undersigned petitioner’s claim is untimely.

Order filed September 7, 2007 at 1. The undersigned requested petitioner file a “Statement Regarding Onset”, as well as, address why following medical records did not establish an onset period as early as 1998.

1) Letter from Carlos H. Gama, M.D at the University Hospital of Jacksonville dated April 4, 1988 - “He was first seen in this clinic in February of 1988 for evaluation of microcephaly and developmental delay.”

2) Record from Speech and Learning Center, Inc. dated June 10, 1991 - “This is a 4yo BM who has a history of failure to thrive, static encephalopathy and developmental delay w/ mental handicap. He also has a lack of speech development.”

3) Record from University Hospital of Jacksonville, Pediatric Neurology (not dated) at the age of 24 months - “Pt. c’ presentation of moderate → severe retardation.

4) Letter from William E. Zinser, M.D at the University Hospital of Jacksonville dated September 11, 1989 “Jarvis is a twenty-nine month old black male who has been followed in this clinic for developmental delay, mental retardation and probable static encephalopathy.”

Order filed September 7, 2007 at 2.

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<sup>2</sup>In relevant part, the Vaccine Act provides “in the case of”

a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, 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 . . . .

42 U.S.C. § 300aa-16(a)(2).

On February 27, 2008, petitioner filed a response to the undersigned's September 7, 2007 Order indicating only that "she has supplied the medical records in this case, which according to her, explain the onset of the condition for which she filed her petition and that there is nothing additional to add regarding the first symptom or manifestation of onset." Response to Order Requesting "Statement Regarding Onset." Petitioner did not address why the above cited medical records do not establish an onset period as early as 1998.

A telephonic conference call was held on March 17, 2008 between the undersigned and the parties to discuss petitioner's Response to Order Requesting "Statement Regarding Onset." Petitioner's counsel indicated he had discussed the court's September 7, 2007 order with petitioner, and petitioner had nothing further to add to the record in this matter. Petitioner's counsel further indicated he understood based on the information filed to date in this matter the undersigned would have no choice but to dismiss the above-captioned case as untimely filed.

Accordingly, the undersigned finds that petitioner's claim must be dismissed as petitioner has not proved by a preponderance of the evidence that the petition was 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" as required by the Vaccine Act. Petitioner's claim is dismissed. The Clerk shall enter judgment accordingly

**IT IS SO ORDERED.** \_\_\_\_\_

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Gary J. Golkiewicz  
Chief Special Master