

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-0345V

Filed: December 11, 2008

Not To Be Published

TIMOTHY SCHWAB and BROOKE SCHWAB, Parents of ATLEE SCHWAB, a Minor

Petitioners' Motion for a Decision Dismissing Petition; Autism; Statute of Limitations; Autism; Statute of Limitations; Untimely Filing

Petitioner(s),

v.

SECRETARY OF HEALTH AND HUMAN SERVICES

Respondent.

DECISION¹

On February 14, 2003 petitioners filed a Short-Form Autism Petition For Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program").² Respondent filed a Motion to Dismiss on July 28, 2008, asking that the undersigned dismiss this

¹Because 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'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.

²The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. §§ 300aa-10 et seq. (West 1991 & Supp. 2002) ("Vaccine Act" or the "Act"). Hereinafter, individual section references will be to 42 U.S.C.A. § 300aa of the Vaccine Act.

petition because it was untimely filed.³

On December 3, 2008, petitioners filed a Motion for a Decision Dismissing their Petition. Petitioners assert “[a]n investigation of the facts and science supporting this case has demonstrated to the Petitioners that, under the current case law controlling their claim, they will be unable to prove their claim was timely filed, and thus unable to prove that they are entitled to compensation in the Vaccine Program.” Petitioners’ Motion for a Decision Dismissing their Petition at 1-2. Accordingly, petitioners request the undersigned dismiss the above-captioned petition. Id.

Accordingly, the undersigned finds that petitioners’ 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. **Petitioners’ claim is dismissed. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

George L. Hastings
Special Master

³ 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).