

ORIGINAL

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 08-756V

Filed: March 23, 2015

Not to be Published

FILED

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U.S. COURT OF
FEDERAL CLAIMS

CHRISTAL SCOTT, *

parent of T.F., a minor, *

Petitioner, *

v. *

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

Respondent. *

Failure to Follow Court
Orders; Failure to Prosecute;
Insufficient Proof of Causation;
Dismissal.

Christal Scott, Irving, TX, pro se petitioner.

Alexis B. Babcock, U.S. Department of Justice, Washington, DC, for respondent.

DECISION

On October 23, 2008, Petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program,¹ alleging that her child, T.F., was injured by an unspecified vaccine or vaccines listed on the Vaccine Injury Table. I hereby dismiss this petition because Petitioner has failed to prosecute or prove this case.

For more than six years, Petitioner has failed to produce an expert report in support of her claim. On November 4, 2008, the former special master on this case issued an Order directing Petitioner to file within 60 days all medical records. On December 2, 2008, Petitioner filed some medical records. On July 15, 2011, Petitioner filed her consent for attorney Richard Gage to appear as counsel of record. The case was reassigned to the undersigned on September 19, 2011.

On September 21, 2011, I issued an Order allowing Petitioner 60 days to file a statement of completion or status report describing Petitioner's efforts to obtain the outstanding medical records. Petitioner continued to request additional time to file these medical records. On July 20, 2012 and July 31, 2012, Petitioner filed a series of affidavits. On September 18-19, 2012,

¹ The 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. §§ 300aa-10 *et seq.* (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa (2006).

Petitioner filed some additional medical records.

At petitioner's request, a "fact hearing" was held on December 11, 2012 in Dallas, Texas, at which I heard testimony from many members of Petitioner's family, but no expert witness. On December 17, 2012, I ordered Petitioner to file a "Statement of Completion" and any missing medical records.


On October 21, 2013, Petitioner filed the Statement of Completion, and on January 24, 2014, I issued an Order allowing Petitioner 90 days in which to file an expert report. After that date, Petitioner filed two motions, each requesting further time in order to file an expert report supporting her claim. (See Motions filed April 14, 2014, and June 23, 2014.)

On September 30, 2014, I granted the request of Petitioner's attorney to withdraw from the case, notifying Petitioner that she was now required to represent herself in this case. On October 3, 2014, I filed an Order allowing the *pro se* petitioner an additional 90 days in which to file an expert report. In response, Petitioner filed only a letter, not an expert report, on January 5, 2015. (ECF #93.)

On January 7, 2015, I filed a "Final Warning to Petitioner," noting that Petitioner had not filed an expert report in response to my Order of October 3, 2014. Petitioner was also advised that failure to follow court orders would result in dismissal of Petitioner's claim. *Tsekouras v. Sec'y, HHS*, 26 Cl. Ct. 439 (1992), *aff'd per curiam*, 991 F.2d 810 (Fed. Cir. 1993); *Sapharas v. Sec'y, HHS*, 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b). Petitioner has not responded to my Warning filed on January 7.

Accordingly, **this case is dismissed for failure to prosecute and failure to follow court orders. The clerk shall enter judgment accordingly.**

IT IS SO ORDERED.



George L. Hastings, Jr.
Special Master