

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FILED

OFFICE OF SPECIAL MASTERS

OCT 17 2003

U.S. COURT OF FEDERAL CLAIMS

_____)
 IN RE: CLAIMS FOR VACCINE)
 INJURIES RESULTING IN AUTISM)
 SPECTRUM DISORDER, OR A SIMILAR)
 NEURODEVELOPMENTAL DISORDER,)
)
 Various Petitioners,)
)
 v.)
)
 SECRETARY OF HEALTH AND)
 HUMAN SERVICES,)
)
 Respondent.)
 _____)

AUTISM MASTER FILE
Special Master Hastings

RESPONSE TO SPECIAL MASTER'S ADDITIONAL QUESTION CONCERNING
THE ISSUANCE OF JUDGMENT UNDER THE VACCINE ACT

On June 27, 2003, the Special Master issued an "Autism Update and Order" in which he posited seven scenarios resulting in the termination a petition and then asked whether judgment should issue in any of them. Respondent provided a response on July 30, 2003. The Special Master then posited an eighth scenario -- a petition being dismissed because it was not timely filed pursuant to 42 U.S.C. §300aa-16(a)(1) -- and asked whether judgment should issue in that situation. Respondent provides the following reply.

Judgment under the Vaccine Act can only follow a "decision" by a special master. 42 U.S.C. §300aa-12(e). In this regard, the Vaccine Act specifically provides that the Clerk enter judgment only following review of, or the termination of review rights concerning, a decision by the special master meeting the

requirements of 42 U.S.C. §300aa-12(d)(3). That decision addresses "whether compensation is to be provided under the Program and the amount of such compensation," and must "include findings of fact and conclusions of law." 42 U.S.C. §300aa-12(d)(3).

A decision of a special master properly addressing whether a claim was timely filed pursuant to 42 U.S.C. §300aa-16(a) should contain all the elements of the "decision" described in section 12(d)(3). That is, such a decision would address whether "compensation is to be provided under the Program." Similarly, assuming that the decision rendered core facts concerning the timing of the "first symptom or manifestation of onset" (42 U.S.C. §300aa-16(a)(1)) and the date the petition was filed, such decision would contain necessary factual findings. Finally, the application of section 16(a) to those facts would constitute a conclusion of law. Accordingly, following any appellate review or absent such, judgment may be entered following a decision meeting the requirements of section 12(d)(3) dismissing a petition as time-barred.

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

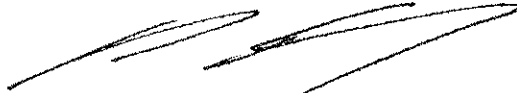
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CERTIFICATE OF SERVICE

I certify that on this 17th day of October, 2003, a copy of respondent's RESPONSE TO SPECIAL MASTER'S ADDITIONAL QUESTION CONCERNING THE ISSUANCE OF JUDGMENT UNDER THE VACCINE ACT was served, by facsimile and by first class mail, postage prepaid, upon:

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