

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

FILED
OCT 30 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,) AUTISM MASTER FILE
v.) Special Master Hastings
SECRETARY OF HEALTH AND)
HUMAN SERVICES,)
Respondent.)

RESPONSE TO SPECIAL MASTER'S QUESTION CONCERNING
THE ISSUANCE OF JUDGMENT FOLLOWING DISMISSAL OF UNTIMELY
PETITIONS OR FOR FAILURE TO PROSECUTE

The Special Master requested clarification from the respondent concerning when judgments should issue under the Vaccine Act. In particular, the Special Master asked whether, if a "judgment" may only issue after a special master issues a decision meeting the requirements of 42 U.S.C. §300aa-12(d)(3), does "that mean that a petitioner cannot obtain review by a judge of the Court of Federal Claims of a special master's ruling dismissing a petition for failure to prosecute, or a ruling dismissing the petition because it was untimely filed?" Order Relating to "Judgments" Issue, filed September 29, 2003.

In respondent's view, the answer to the Special Master's question is generally "no." A petitioner would be able to seek Court of Federal Claims review of a decision dismissing a case as

untimely or on the grounds that petitioner failed to prosecute it.¹ Any dismissal issued by a special master for either of these grounds would contain the basic elements of a "decision" described under section 12(d)(3), and therefore merit entry of judgment under the Act. For a case dismissed as untimely, the decision would contain basic factual findings regarding the date of onset of the injury alleged, the date the petition was filed, and the legal conclusion that the claim was barred under the Vaccine Act's statute of limitations. Similarly, a dismissal for failure to prosecute should contain the basic elements of a decision described under section 12(d)(3) -- a description of the facts leading up to the dismissal as well as the legal conclusion that, in such circumstances, it was within the discretion of the special master to dismiss the case for failure to prosecute.²

Respondent reiterates that the touchstone for determining whether a judgment should be entered is the issuance of a decision meeting the requirements of 42 U.S.C. §300aa-12(d)(3). This section requires a decision regarding whether compensation should be awarded with supporting findings of fact and legal

¹ Indeed, such appeals have been filed in the past. See, e.g., Brice v. HHS, 240 F.3d 1367 (Fed. Cir.), cert. denied 534 U.S. 1040 (2001).

² Respondent notes that, while unlikely, a petitioner could deliberately refuse to prosecute their Vaccine Act claim to prompt a decision dismissing the petition for failure to prosecute and the ensuing judgment. That judgment could then be rejected in favor of filing a civil action, thereby frustrating Congress's purpose in creating the Vaccine Act as the initial forum for resolution of claims of vaccine injury.

conclusions. The past practice of issuing judgments in the absence of such a decision is not authorized by the terms of the Vaccine Act.

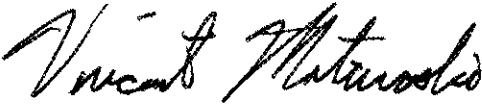
Respectfully submitted,


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Date: 29 007 2003

CERTIFICATE OF SERVICE

I certify that on this 30th day of October, 2003, a copy of respondent's RESPONSE TO SPECIAL MASTER'S QUESTION CONCERNING THE ISSUANCE OF JUDGMENT FOLLOWING DISMISSAL OF UNTIMELY PETITIONS OR FOR FAILURE TO PROSECUTE was served, by facsimile and by first class mail, postage prepaid, upon:

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733 15th Street NW
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Michael L. Williams
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A handwritten signature in black ink, appearing to read "M. L. Williams", is written over a horizontal line.