

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGUSTINA SANCHEZ, individually)
and on behalf of KAYLEY)
JAZZMINE JIMENEZ-SANCHEZ,)
minor,)
)
Petitioner,)
)
vs.) Case No. 12-1050N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
ORLANDO HEALTH, INC., d/b/a)
WINNIE PALMER HOSPITAL FOR)
WOMEN & BABIES AND LORI-ANN)
SPREITZER, M.D.,)
)
Intervenors.)
_____)

SUMMARY FINAL ORDER

This cause came on for consideration upon an unopposed Motion for Summary Final Order filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA) on July 12, 2012.

STATEMENT OF THE CASE

On March 16, 2012, Petitioner, Agustina Sanchez, individually and on behalf of Kayley Jazzmine Jimenez-Sanchez (Kayley), a minor, filed a Petition for Benefits Pursuant to

Florida Statute Section 766.301 et seq. (Petition) with the Division of Administrative Hearings (DOAH) for compensation under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Petition named Dr. Lori-Ann Spreitzer and Winnie Palmer Hospital.

DOAH served NICA with a copy of the Petition on March 21, 2012. DOAH served Winnie Palmer Hospital with a copy of the Petition on March 22, 2012. DOAH sent a copy of the Petition by certified mail to Dr. Spreitzer on March 20, 2012. DOAH did not receive a return receipt from the United States Postal Service showing delivery to Dr. Spreitzer.

On March 27, 2012, Orlando Health, Inc., d/b/a Winnie Palmer Hospital for Women & Babies and Dr. Spreitzer filed a Petition for Leave to Intervene. On April 11, 2012, an Order Granting Petition to Intervene was entered.

On July 12, 2012, NICA filed a Motion for Summary Final Order, asserting that Kayley did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. NICA represents in its motion that neither Petitioner nor Intervenors object to the entry of a Summary Final Order determining that Petitioner's claim is not compensable under the Plan as a matter of law.

FINDINGS OF FACT

1. Kayley was born January 26, 2009, at Winnie Palmer Hospital in Orlando, Florida. She weighed 2,928 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records of Kayley. In an affidavit dated July 9, 2012, Dr. Willis opined as follows:

Based upon my education and experience, it is my professional opinion, within a reasonable degree of medical probability that Kayley Jazzmine Jimenez-Sanchez did not suffer a "Birth-related Neurological Injury" as defined by Florida Statutes Section 766.302(2) as there was no oxygen deprivation or mechanical injury during labor, delivery, or resuscitation in the immediate post delivery period which resulted in injury to Kayley's brain or spinal cord.

3. Attached to Dr. Willis' affidavit was a report detailing his findings based on the medical records of Kayley as follows:

Fetal heart rate (FHR) monitoring on admission shows a normal baseline heart rate of 145 bpm. The pattern is reactive. The FHR monitor strip does not show any fetal distress prior to delivery.

Cesarean section delivery was done without difficulty. Birth weight was 2,928 grams (6 lbs 7 oz's). Apgar scores were 4/8. Umbilical cord blood gas was normal with a pH of 7.28 and base excess of -1.9. The baby was taken to the nursery. Difficulty with feeding occurred with emesis after attempting to feed. X-Ray showed a dilated loop of bowel. Gastorgrafen enema was done

for evaluation and identified Small Left Colon syndrome.

Neurology evaluation at 2 days of age was done for jitteriness. Exam shows abnormal muscle tone. EEG on DOL 2 was normal. Head ultrasound also had normal findings. Skull X-Ray showed asymmetry of the skull bones. MRI on DOL 3 identified dilation of the left lateral ventricle. There were no findings suggestive of hypoxic ischemic encephalopathy. Genetic evaluation was done for the above findings and was negative. Chromosome analysis was normal. Genomic hybridization array was negative.

In summary, there was no fetal distress during labor. Delivery was by Cesarean section due to breech presentation. The newborn was not depressed. Umbilical cord blood gas was normal with a pH of 7.28. The baby was identified to have congenital malformations, including Small Left Colon syndrome and dilation of the left ventricle in the brain. MRI did not suggest hypoxic ischemic brain injury.

There was no apparent obstetrical event that resulted in loss of oxygen or mechanical trauma to the baby's brain during labor, delivery or the immediate post delivery period.

4. A review of the file in this case reveals that there have been no expert opinions filed that are contrary to the opinion of Dr. Willis. The opinion of Dr. Willis that Kayley did not suffer a neurological injury due to oxygen deprivation or mechanical injury during labor, delivery, or immediate post-delivery period is credited.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

6. The Plan was established by the Legislature "for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims" relating to births occurring on or after January 1, 1989. § 766.303(1), Fla. Stat.

7. The injured infant, her or his personal representative, parents, dependents, and next of kin may seek compensation under the Plan by filing a claim for compensation with DOAH. §§ 766.302(3), 766.303(2), and 766.305(1), Fla. Stat. NICA, which administers the Plan, has "45 days from the date of service of a complete claim . . . in which to file a response to the petition and to submit relevant written information relating to the issue of whether the injury is a birth-related neurological injury." § 766.305(4), Fla. Stat.

8. If NICA determines that the injury alleged in a claim is a compensable birth-related neurological injury, it may award compensation to the claimant, provided that the award is approved by the administrative law judge to whom the claim has been assigned. § 766.305(7), Fla. Stat. If, on the other hand, NICA disputes the claim, as it has in the instant case, the dispute must be resolved by the assigned administrative law

judge in accordance with the provisions of chapter 120, Florida Statutes. §§ 766.304, 766.309, and 766.31, Fla. Stat.

9. In discharging this responsibility, the Administrative Law Judge must make the following determination based upon the available evidence:

(a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the administrative law judge, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.303(2).

(b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital.

§ 766.309(1), Fla. Stat. An award may be sustained only if the administrative law judge concludes that the "infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth." § 766.31(1), Fla. Stat.

10. The term "birth-related neurological injury" is defined in section 766.302(2) as follows:

"Birth-related neurological injury" means injury to the brain or spinal cord of a live infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired.

11. The evidence, which is not refuted, established that Kayley did not sustain an injury to the brain or spinal cord caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, which renders her substantially and permanently physically and mentally impaired. Therefore, Kayley is not eligible for benefits under the Plan.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the petition for benefits filed by Agustina Sanchez, individually and on behalf of Kayley, is dismissed with prejudice.

DONE AND ORDERED this 13th day of July, 2012, in
Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
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this 13th day of July, 2012.

COPIES FURNISHED:

(Via Certified Mail)

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Review of a final order of an administrative law judge shall be by appeal to the District Court of Appeal pursuant to section 766.311(1), Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal. See § 766.311(1), Fla. Stat., and Fla. Birth-Related Neurological Injury Comp. Ass'n v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992).