

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PETRA CRESPO AND ALEXANDER G.)
SORIANO, on behalf of and as)
parents and natural guardians)
of ALEXANDER SORIANO, JR., a)
minor,)
)
Petitioners,)
)
vs.) Case No. 12-3397N
)
FLORIDA BIRTH- RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
ORLANDO HEALTH, INC., d/b/a)
WINNIE PALMER HOSPITAL FOR)
WOMEN & BABIES, PENNY A. DANNA,)
M.D., AND PHYSICIAN ASSOCIATES,)
LLC,)
)
Intervenors.)
_____)

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon a Motion for Summary Final Order filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), on April 22, 2013.

STATEMENT OF THE CASE

On October 16, 2012, Petitioners, Petra Crespo and Alexander G. Soriano, on behalf of and as parents and natural

guardians of Alexandra G. Soriano, Jr. (Alexander), 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 a determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

The Petition named Norman L. Lamberty, M.D., as the physician providing obstetric services at the birth of Alexander at Winnie Palmer Hospital in Orlando, Florida.

DOAH served NICA with a copy of the Petition on October 18, 2012. DOAH served Dr. Lamberty with a copy of the Petition on October 19, 2012.

On November 7, 2012, Orlando Health, Inc., d/b/a Winnie Palmer Hospital for Women & Babies (Winnie Palmer Hospital) filed Intervenor's Motion to Intervene, which was granted by Order dated November 26, 2012. On November 16, 2012, Penny A. Danna, M.D., and Physician Associates LLC, filed a Petition for Leave to Intervene by Penny A. Danner, M.D., and Physician Associates LLC, which was granted by Order dated November 29, 2012.

NICA filed a Motion for Summary Final Order, asserting that Alexander did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. NICA represented in the motion that Petitioners and Intervenors

are accepting NICA's denial of benefits under the Plan and have no objections to the granting of the Motion for Summary Final Order.

FINDINGS OF FACT

1. Alexander Soriano born on July 3, 2011, at Winnie Palmer Hospital in Orlando, Florida. Alexander weighed 3,442 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Alexander. In a medical report dated March 28, 2013, Dr. Willis opined the following:

In summary, the mother presented at term with decreased fetal movement and an abnormal FHR pattern. There was no mention of the mother being in labor. Her cervix was not dilated and consistent with no active labor. Cesarean section delivery was required. The baby was severely depressed and had no detectable cardiac activity at birth. The hospital course was consistent with hypoxic ischemic brain injury with multisystem dysfunction, EEG and MRI studies should [sic] brain injury.

Available information suggests the patient was not in labor. Oxygen deprivation and brain injury most likely occurred at some time prior to delivery. Although the hypoxia and brain injury may have continued during delivery and into the post-delivery period, the initial brain injury and substantial damage were most likely already present prior to birth.

3. NICA retained Michael S. Duchowny, M.D., a Florida board-certified pediatric neurologist to review the instant

claim and to conduct an examination of Alexander, and render an opinion whether a birth-related neurological injury occurred.

In a report dated January 23, 2013, Dr. Duchowny opined:

While Alexander's birth history documents severe problems resulting from his meconium aspiration syndrome, his present neurological examination reveals neither a permanent nor substantial mental or physical impairment. Essentially Alexander has done remarkably well despite his neonatal course, and I would anticipate continued improvement in the future. I regard his developmental abnormalities as unrelated to the perinatal circumstances and therefore not recommend Alexander for inclusion in the NICA program.

4. A review of the file does not show any contrary opinions, and Petitioners and Intervenors have no objection to the issuance of a summary final order finding that the injury is not compensable under Plan. The opinion of Dr. Willis that Alexander did not suffer a neurological injury due to oxygen deprivation or mechanical injury during labor, delivery, or the immediate postdelivery period is credited. Dr. Duchowny's opinion that Alexander does not have a permanent and substantial mental and physical impairment 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 Alexander 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 resulted in a permanent and substantial mental and physical impairment. Therefore, Alexander 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 filed by Petro Crespo and Alexander G. Soriano, on behalf of and as parents and natural guardians of Alexander Soriano, Jr., is dismissed with prejudice.

DONE AND ORDERED this 29th day of April, 2013, 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 29th day of April, 2013.

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).