

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHERITA LEEKS, as personal
representative of the estate of
JER'DONIS PRINGLE, on behalf of
his survivors, individually
SHERITA LEEKS and GREGORY
PRINGLE,

Petitioners,

vs.

Case No. 13-1652N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

HAINES CITY HMA, LLC, d/b/a
HEART OF FLORIDA REGIONAL
MEDICAL CENTER; EDMUND ANDAH,
M.D.; AND HEART OF FLORIDA OBGYN
ASSOCIATES, P.A.,

Intervenors.

_____ /

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon the Motion for
Summary Final Order filed by Respondent, Florida Birth-Related
Neurological Injury Compensation Association (NICA), on
August 29, 2013.

STATEMENT OF THE CASE

On April 19, 2013, Petitioner, Sherita Leeks, individually and as personal representative of the estate of Jer'Donis Pringle (Jer'Donis), on behalf of his survivors, and Gregory Pringle, individually, filed a Petition Filed Under Protest (Petition) with the Division of Administrative Hearings (DOAH) for a determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). An Amended Petition Filed Under Protest (Amended Petition) was filed on May 6, 2013.

The Petition named Edmund Andah as the physician who delivered Jer'Donis at Heart of Florida Regional Medical Center located in Davenport, Florida.

DOAH served NICA with a copy of the Petition on May 9, 2013. On May 29, 2013, Haines City HMA, LLC., d/b/a Heart of Florida Regional Medical Center filed a Motion for Leave to Intervene, which was granted by Order dated June 11, 2013. On June 14, 2013, Dr. Andah and Heart of Florida OB/GYN Associates, P.A., filed a Motion for Leave to Intervene, which was granted by Order dated July 17, 2013.

On August 29, 2013, NICA filed a Motion for Summary Final Order, asserting that Jer'Donis did not sustain a "birth-related neurological injury" as that term is defined in section

766.302(2), Florida Statutes. Neither Petitioners nor Intervenor filed a response to the motion.

On September 16, 2013, an Order to Show Cause was entered requiring Petitioners and Intervenor to show cause in writing why the Motion for Summary Final Order should not be granted. On October 1, 2013, NICA filed a Status Report, representing that all parties agree and stipulate to the entry of a Summary Final Order finding that Petitioners' claim is not compensable.

FINDINGS OF FACT

1. Jer'Donis Pringle was born on June 24, 2011, at Heart of Florida Regional Medical Center located in Davenport, Florida. Jer'Donis weighed 3,004 grams at birth.

2. NICA retained Donald Willis, M.D., a Florida board-certified obstetrician and gynecologist specializing in maternal-fetal medicine to review the medical records of Jer'Donis. In an affidavit dated July 2, 2013, Dr. Willis opined as follows:

Based upon my education and experience, it is my professional opinion, within a reasonable degree of medical probability that the pregnancy was complicated by Maternal Diabetes, that fetal testing at 34 weeks suggested fetal distress, that based on available medical records, the mother did not appear to be in labor at time of delivery by Cesarean section, and that the baby suffered severe oxygen deprivation and resulting brain damage. Overall findings suggest that severe brain injury occurred at some time prior to hospital admission and, therefore, prior to delivery.

3. A review of the file does not show any opinion contrary to Dr. Willis' opinion that Sherita Leeks was not in labor prior to delivery and that Jer'Donis suffered severe oxygen deprivation resulting in brain injury prior to admission to the hospital and delivery is credited.

CONCLUSIONS OF LAW

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

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. The evidence, which is not refuted, established that Jer'Donis' mother was not in labor prior to delivery and that Jer'Donis suffered severe oxygen deprivation resulting in brain injury prior to delivery. Thus, Petitioners are not entitled to compensation under the plan.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition filed by Sherita Leeks, individually and as personal representative of the estate of Jer'Donis Pringle, and by Gregory Pringle, individually, is dismissed with prejudice.

DONE AND ORDERED this 8th day of October, 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 8th day of October, 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).