

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ADRIANA AND CODY PILLOW, on  
behalf of and as parents and  
natural guardians of LANDON  
PILLOW, a minor,

Petitioners,

vs.

Case No. 13-2901N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent,

and

MICHAEL COTTER, M.D., NORTH  
FLORIDA WOMAN CARE, d/b/a  
GAINESVILLE OB/GYN, AND NORTH  
FLORIDA REGIONAL MEDICAL CENTER,

Intervenors.

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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 July 7, 2014, and served by electronic mail on July 4, 2014.

STATEMENT OF THE CASE

On July 16, 2013, Petitioners, Adriana Pillow and Cody Pillow, on behalf of and as parents and natural guardians of Landon Pillow (Landon), 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 Michael B. Cotter, M.D., as the physician providing obstetrical services at the birth of Landon on November 29, 2010, at North Florida Regional Medical Center located in Gainesville, Florida.

DOAH served NICA with a copy of the Petition on August 6, 2013. DOAH served a copy of the Petition on Dr. Cotter on August 8, 2013. DOAH served a copy of the Petition on North Florida Regional Medical Center on August 8, 2013.

On October 7, 2013, Dr. Cotter and North Florida Woman Care, d/b/a Gainesville OB/GYN filed a Petition for Leave to Intervene, which was granted by Order dated October 16, 2013. On October 29, 2013, North Florida Regional Medical Center filed an Amended Petition to Intervene, which was granted by Order dated November 7, 2013.

On July 7, 2014, NICA filed a Motion for Summary Final Order, asserting that Landon did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. On June 12, 2014, North Florida Regional Medical Center filed a Response to Order dated May 21, 2014, and stated that it did not take a formal position with regard to NICA's position that the claim was not compensable. On

June 4, 2014, Petitioners filed a Response to Order dated May 21, 2014, stating that Petitioners did not see a need for a hearing to determine whether the claim was compensable and waived a hearing on whether the claim was compensable.

The Motion for Summary Final Order was served by electronic mail on July 4, 2014. Other than the responses to the Order dated May 21, 2014, requiring the parties to advise the undersigned of hearing dates for a final hearing, none of the parties have filed a response to the Motion for Summary Final Order.

#### FINDINGS OF FACT

1. Landon Pillow was born on November 29, 2010, at North Florida Regional Medical Center in Gainesville, Florida. Landon weighed 3,500 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Landon, to determine whether an injury occurred in the course of labor, delivery, or resuscitation in the immediate post-delivery period in the hospital due to oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period. Dr. Willis described his findings as follows:

In summary, there was a non-reassuring FHR pattern during labor. It is unlikely this resulted in any significant oxygen

deprivation to the fetus, based on a cord blood gas pH > 7.0 and a normal newborn hospital course. Babies with birth related hypoxic brain injury will generally have multi-organ failures during the newborn period.

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.

3. Dr. Willis reviewed additional medical records on January 16, 2014, and, based on his review of those records, opined as follows:

The additional records do not change any of my opinions concerning this case. The child suffered a brain injury, but the etiology is still undetermined. Based on the cord blood gas pH > 7 and a normal newborn hospital course after delivery, it does not seem reasonable to time the brain insult as birth related.

4. NICA retained Michael S. Duchowny, M.D., to examine Landon and to review his medical records. Dr. Duchowny examined Landon on April 30, 2014, and gave the following opinion:

In summary, Landon's neurological examination today was extremely limited because of his postictal state. However, there were no specific focal or lateralizing findings despite the history of a left hemisphere infarct and porencephalic cavity.

A review of medical records sent on February 26, 2014 confirms the history obtained today which revealed no evidence of a neurological injury to the brain or spinal cord due to oxygen deprivation or mechanical injury in the course of labor, delivery, or

the immediate postnatal period. Landon's cord blood pH was 7.25 and the base excess was -4. Both values are near-normal.

Although the neurological examination was suboptimal, the history obtained today from the family and from medical records indicate that Landon's neurological impairment was acquired prenatally. I therefore believe that he should not be considered for compensation within the NICA program.

5. A review of the file in this case reveals that there have been no expert opinions filed that are contrary to the opinions of Dr. Willis and Dr. Duchowny that there was no obstetrical event that resulted in injury to the brain or spinal cord due to oxygen deprivation or mechanical injury during labor, delivery or the immediate post-delivery period. Their opinions are credited.

#### CONCLUSIONS OF LAW

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. The evidence, which is not refuted, established that Landon 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, and resuscitation in the immediate

post-delivery period in a hospital. Therefore, Landon 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 Adriana Pillow and Cody Pillow, on behalf of and as parents and natural guardians of Landon Pillow, is dismissed with prejudice.

DONE AND ORDERED this 16th day of July, 2014, in Tallahassee, Leon County, Florida.

*Susan Belyeu Kirklund*

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SUSAN BELYEU KIRKLAND  
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Filed with the Clerk of the  
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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).