

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAUDELINA OCASIO AND IAN OCASIO,
on behalf of and as parents and
natural guardians of IAN OCASIO,
a minor,

Petitioner,

vs.

Case No. 13-3325N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

ORLANDO HEALTH, INC., d/b/a
WINNIE PALMER HOSPITAL FOR WOMEN
& BABIES, PHYSICIAN ASSOCIATES,
LLC, AND DOROTHY JEAN ODOM,
M.D.,

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 December 5, 2013.

STATEMENT OF THE CASE

On August 30, 2013, Petitioners, Laudelina Ocasio and Ian Ocasio, on behalf of and as parents and natural guardians of

Ian Ocasio (Ian), a minor, filed a Petition Under Protest 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 Dorothy Odom, M.D., as the physician providing obstetric services at the birth of Ian at Winnie Palmer Hospital for Women and Children in Orlando, Florida.

DOAH served NICA with a copy of the Petition on September 4, 2013. DOAH served Dr. Odom with a copy of the Petition on September 7, 2013. DOAH received a return receipt from the United States Postal Service on September 23, 2013, showing that Winnie Palmer Hospital for Women and Children had been served with a copy of the Petition.

On September 17, 2013, Orlando Health, Inc., d/b/a Winnie Palmer Hospital for Women and Babies, Physicians Associates, LLC, and Dr. Odom filed a Petition for Leave to Intervene, which was granted by Order dated October 1, 2013.

On December 5, 2013, NICA filed a Motion for Summary Final Order, asserting that Ian 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 had no objection to the granting of the motion. As of the date of this Summary Final Order of Dismissal, the

Intervenors have not filed a response to the Motion for Summary Final Order.

FINDINGS OF FACT

1. Ian Ocasio was born on April 20, 2010, at Winnie Palmer Hospital for Women and Children in Orlando, Florida. Ian weighed 2,749 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Ian. In a medical report dated September 20, 2013, Dr. Willis opined:

In summary, the baby was delivered by Cesarean section due to preterm labor and a recent genital herpes outbreak. Herpes cultures from the baby were negative. There was no fetal distress during labor. The baby was not depressed at birth and did not require any resuscitation. Umbilical cord blood gas was not done. Apgar scores were normal. 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. A review of the file does not show any contrary opinions, and Petitioners have no objection to the issuance of a summary final order finding that the injury is not compensable under the Plan. The opinion of Dr. Willis that Ian did not suffer a neurological injury due to oxygen deprivation or mechanical injury during labor, delivery, or the immediate post-delivery period 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 Ian 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 post-delivery period in a hospital. Therefore, Ian 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 Laudelina Ocasio and Ian Ocasio on behalf of and as parents and natural guardians of Ian Ocasio, is dismissed with prejudice.

DONE AND ORDERED this 7th day of January, 2014, in
Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of January, 2014.

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).