

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BILLY AND STACY BAUGHMAN, on  
behalf of and as parents and  
natural guardians of RILEY  
BAUGHMAN, a minor,

Petitioners,

vs.

Case No. 13-3869N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent,

and

ORLANDO HEALTH, INC., d/b/a  
SOUTH SEMINOLE HOSPITAL, AND  
DAVID GOSS, M.D.,

Intervenors.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon Respondent's Motion for Summary Final Order filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), on February 26, 2014.

STATEMENT OF THE CASE

On September 6, 2013, Petitioners, Billy Baughman and Stacy Baughman, on behalf of and as parents and natural guardians of Riley Baughman (Riley), 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 David Goss, M.D., as the physician providing obstetric services at the birth of Riley at South Seminole Hospital in Longwood, Florida.

DOAH served NICA with a copy of the Petition on October 8, 2013. On October 17, 2013, DOAH received a certified return receipt from the United States Postal Service showing that South Seminole Hospital had been served with a copy of the Petition.

On October 29, 2013, Orlando Health, Inc., d/b/a South Seminole Hospital filed a Petition for Leave to Intervene, which was granted by Order dated November 14, 2013. On November 18, 2013, Dr. Goss filed a Petition for Leave to Intervene, which was granted by Order dated December 3, 2013.

On February 26, 2014, NICA filed a Motion for Summary Final Order, asserting that Riley did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. Respondent represented the following in the motion: "Respondent has contacted the Petitioners and counsel for the Intervenors and none of the parties to this action object to this Motion."

## FINDINGS OF FACT

1. Riley Baughman was born on September 8, 2008, at South Seminole Hospital in Longwood, Florida. Riley weighed 3,425 grams at birth.

2. NICA requested Donald Willis, M.D., to review the medical records of Riley. In a letter to NICA dated January 17, 2014, Dr. Willis stated the following based on his review of the medical records:

I have reviewed the medical records for the above individual [Riley]. The mother, Stacy Baughman [sic] was a 34 year old having her first child. She was evaluated for advanced maternal age with negative screening tests and normal appearing fetus by ultrasound.

Hypertension developed close to term. Labor was induced at 39 weeks due to hypertension. Cervical dilation was 3 cms on admission.

Fetal heart rate monitor tracing during labor was not available for review. Vaginal delivery was apparently uncomplicated. Birth weight was 3,425 grams (7 lbs 8 oz's). The baby was not depressed at birth. Apgar scores were 8/9. No resuscitation was required.

The newborn hospital course was uncomplicated. Discharge from the hospital occurred on DOL 2.

Subsequently, the child was diagnosed with cerebral palsy and mild developmental delay. Seizures were suspected at 4 years of age. EEG was negative for seizure activity.

In summary, labor was induced at term for maternal hypertension. Spontaneous vaginal delivery was achieved without difficulty.

The newborn was not depressed and had a normal hospital course with discharge home on DOL 2.

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. Michael Duchowny, M.D. (Dr. Duchowny), was requested by NICA to do an independent medical examination of Riley.

Dr. Duchowny examined Riley on December 18, 2013. Based on his examination, Dr. Duchowny opined the following:

Riley's general, physical and neurological examinations are only abnormal with respect to both gross and fine motor coordination and hypotonia. She also has a speech articulation disturbance. In contrast, her cognitive skills are at age level and there are no true restrictions on her motor activity apart from her incoordination. Although the set of medical records is incomplete and I have not had an opportunity to formerly evaluate her MR imaging studies, Riley's examination does not reveal either a permanent mental or motor impairment. I further believe that her impairments were acquired prenatally and unlikely to result from either mechanical injury or oxygen deprivation in the course of labor or delivery.

For the above reasons, I do not believe that Riley should be considered for compensation in the NICA program.

4. A review of the file does not show any contrary opinion that Petitioners' claim is not compensable under Plan. The opinion of Dr. Willis that Riley did not sustain a mechanical

injury or oxygen deprivation during labor, delivery, or resuscitation in the immediate post delivery period is credited. Dr. Duchowny's opinion that Riley does not have either a permanent mental or motor impairment is credited. Respondent has represented that neither Petitioners nor Intervenors object to the granting of the motion.

#### 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 Riley did not sustain a mechanical injury or oxygen deprivation during labor or delivery and that Riley does not have permanent mental and motor impairments; thus, Riley has not sustained a birth-related neurological injury. Therefore, Riley 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 Billy Baughman and

Stacy Baughman, on behalf of and as parents and natural guardians of Riley Baughman, is dismissed with prejudice.

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

*Susan Belyeu Kirklund*

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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).