

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

OFELIA SANTIAGO, individually  
and on behalf of APRIL SANTIAGO,  
a minor,

Petitioner,

vs.

Case No. 13-3880N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent.

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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 March 17, 2014.

STATEMENT OF THE CASE

On October 3, 2013, Petitioner, Ofelia Santiago, individually and on behalf of April Santiago (April), 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 Dr. Sharon Young Byun and Dr. Lindsey Malloch as the physicians providing

obstetric services at the birth of April at Shands Teaching Hospital in Gainesville, Florida.

DOAH served NICA with a copy of the Petition on October 10, 2013. DOAH served a copy of the Petition on Shands Hospital on October 14, 2013. On October 15, 2013, DOAH received a receipt from the United States Postal Service showing that Dr. Byun had been served with a copy of the Petition. On October 30, 2013, DOAH received a receipt from the United States Postal Service showing that Dr. Malloch had been served with a copy of the Petition. As of the date of the Summary Final Order of Dismissal, Shands Teaching Hospital, Dr. Byun, and Dr. Malloch have not petitioned to intervene in this proceeding.

On March 17, 2014, NICA filed a Motion for Summary Final Order, asserting that April did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. The motion was heard by telephonic conference call on April 2, 2014, and counsel for Petitioner advised that Petitioner had no objection to the granting of the motion.

#### FINDINGS OF FACT

1. April Santiago was born on November 23, 2011, at Shands Teaching Hospital in Gainesville, Florida. April weighed in excess of 2,500 grams at the time of her birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records of April. Based on his review of the medical records, Dr. Willis opined as follows:

In summary, the mother presented to the hospital with an imminent delivery, which was complicated by a shoulder dystocia. The baby was depressed at birth, but recovered quickly. The umbilical cord blood pH of 7.19 was within normal limits and consistent with no significant hypoxia during labor or delivery. By DOL 2 the respiratory depression had resolved and the child was on room air and taking oral feedings. The baby was stable and would consider the post-delivery resuscitation period to be over.

On DOL 5 the baby had a renal artery thrombosis, which caused a hypertensive crisis and resulted in cerebral hemorrhage and brain damage.

There was no apparent obstetrical event that resulted in loss of oxygen or mechanical trauma to the baby's brain or spinal cord during labor, delivery or the immediate post delivery period. The baby did have trauma at time of delivery, which included a fractured humerus and clavicle, but no trauma to the spine or brain. The baby was stable and would be considered out of the post-delivery resuscitation period when a renal artery thrombosis, hypertensive crisis and resulting cerebral hemorrhage occurred.

3. A review of the file does not show any contrary opinion to Dr. Willis' opinion that the claim is not compensable under the Plan. The opinion of Dr. Willis that April did not sustain a birth-related neurological injury 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 April did not sustain an injury to the brain or spinal cord caused by oxygen deprivation or mechanical injury during labor, delivery, or resuscitation in the immediate post-delivery period; thus, April has not sustained a birth-related neurological injury. Therefore, April 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 Ofelia Santiago, individually, and on behalf of April Santiago, is dismissed with prejudice.

DONE AND ORDERED this 4th day of April, 2014, in  
Tallahassee, Leon County, Florida.

*Susan Belyeu Kirklund*

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SUSAN BELYEU KIRKLAND  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of April, 2014.

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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).