

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RASHAD SUKHU AND ANJANI  
RAMOUTAR, on behalf of and as  
parents and natural guardians of  
ALINA KARINA SUKHU, a minor,

Petitioners,

vs.

Case No. 14-0014N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent.

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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 August 28, 2014.

STATEMENT OF THE CASE

On January 6, 2014, Petitioners, Rashad Sukhu and Anjani Ramoutar, on behalf of and as parents and natural guardians of Alina Karina Sukhu (Alina), 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 Juan Ravelo, M.D., as the physician providing obstetrical services at the birth of Alina on June 23, 2011, at Florida Hospital located in Orlando, Florida.

DOAH served NICA with a copy of the Petition on January 10, 2014. On January 13, 2014, DOAH received a return receipt from the United States Postal Service showing that Florida Hospital had been served with a copy of the Petition. On January 13, 2014, DOAH received a return receipt from the United States Postal Service showing that Dr. Ravelo had been served with a copy of the Petition.

Neither Juan Ravelo, M.D., nor Florida Hospital has petitioned to intervene in this proceeding.

On August 28, 2014, NICA filed a Motion for Summary Final Order, asserting that Alina did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. The motion was served by United States Mail on August 28, 2014. An Order to Show Cause was entered on September 11, 2014, advising Petitioners to show cause in writing why Respondent's Motion for Summary Final Order should not be granted. On September 19, 2014, Petitioner Anjani Ramoutar filed a letter in opposition to the motion.

FINDINGS OF FACT

1. Alina Karina Sukhu was born on June 23, 2011, at Florida Hospital located in Orlando, Florida. Alina weighed 6 pounds 12 ounces at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Alina, 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. In an affidavit dated August 14, 2014, Dr. Willis described his findings as follows:

In summary, labor and delivery were apparently uncomplicated. Umbilical cord blood gas was not done. The newborn had decreased muscle tone and feeding difficulty. MRI of the brain showed some abnormalities that could represent hemorrhage or hypoxic injury. However, the FHR tracing did not suggest fetal distress during labor and delivery was uncomplicated. These findings suggest that the brain injury was most likely not birth related.

There was no apparent obstetrical event that resulted in loss of oxygen or mechanical trauma to the baby's brain during labor or delivery.

3. NICA retained Michael S. Duchowny, M.D., a pediatric neurologist, to examine Alina and to review her medical records.

Dr. Duchowny examined Alina on May 28, 2014. In an affidavit dated August 18, 2014, Dr. Duchowny opined as follows:

In summary, Alina's neurological examination reveals global developmental delay characterized by a complex 4-limb motor disability with static hypotonia, truncal ataxia, and dynamic hypertonicity. She has absent language development, a cortical visual impairment, and severe oro-motor incoordination necessitating caloric intake via an indwelling gastrostomy tube.

Although Alina has a substantial mental and motor impairment, the medical records do not provide evidence to suggest that her neurological injury was acquired due to oxygen deprivation or mechanical injury in the course of labor and delivery. I therefore am not recommending Alina to be considered for compensation within the NICA program.

4. Petitioner Anjani Ramoutar filed a letter in opposition to NICA's Motion for Summary Final Order. In the letter, Petitioner raises the issue of fault. However, as addressed in the Conclusions of Law, the Florida Birth-Related Neurological Injury Compensation Plan was established for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury that fits within specific statutory definitions to be eligible to receive benefits under the Plan. §§ 766.302(2), 766.303(1), and 766.309(1), Fla. Stat.

5. A review of the file in this case reveals that there have been no expert opinions filed that are contrary to the opinion of Dr. Willis that there was no apparent obstetrical

event that resulted in loss of oxygen or mechanical trauma to the baby's brain during labor or delivery. Dr. Willis' opinion is credited. There are no contrary expert opinions filed that are contrary to Dr. Duchowny's opinion that although Alina has a substantial mental and motor impairment, the medical records do not provide evidence to suggest that her neurological injury was acquired due to oxygen deprivation or mechanical injury in the course of labor and delivery. Dr. Duchowny's opinion is 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. While Petitioner's letter is in disagreement with Drs. Willis and Duchowny's conclusions, the evidence, which is not refuted by any contrary expert opinions, established that Alina did not sustain an injury to the brain caused by oxygen deprivation or mechanical injury in the course of labor and delivery. Therefore, Alina 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 Rashad Sukhu and Anjani Ramoutar, on behalf of and as parents and natural guardians of Alina Karina Sukhu, is dismissed with prejudice, and the final hearing scheduled for November 14, 2014, is canceled.

DONE AND ORDERED this 14th day of October, 2014, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of October, 2014.

COPIES FURNISHED:  
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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).