

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MELISSA ROBERTS AND CHRISTOPHER
ROBERTS, on behalf of and as
parents and natural guardians of
BRAYLON ROBERTS, a minor,

Petitioners,

vs.

Case No. 14-0530N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

ST. JOSEPH'S WOMEN'S HOSPITAL,

Intervenor.

_____ /

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 January 27, 2015.

STATEMENT OF THE CASE

On February 3, 2014, Petitioners, Melissa Roberts and Christopher Roberts, on behalf of and as parents and natural guardians of Braylon Roberts (Braylon), 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 Yejide O. Sokoya, M.D., as the physician providing obstetrical services at the birth of Braylon on February 3, 2009, at St. Joseph's Women's Hospital located in Tampa, Florida.

DOAH served NICA with a copy of the Petition on February 5, 2014. DOAH served St. Joseph's Women's Hospital with a copy of the Petition on March 13, 2014. On February 4, 2014, DOAH attempted service of a copy of the Petition to Yejide O. Sokoya, M.D., by certified mail. However, the envelope was returned to DOAH from the United States Postal Service marked "Return to Sender, Attempted-Not Known, Unable to Forward" on February 24, 2014.

Intervenor St. Joseph's Women's Hospital filed a Petition to Intervene on March 27, 2014, which was granted by Order dated April 10, 2014.

On January 27, 2015, NICA filed a Motion for Summary Final Order, asserting that Braylon did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. An Order to Show Cause was entered on February 10, 2015, and an Amended Order to Show Cause was entered on February 16, 2015, advising Petitioners to show cause in writing why Respondent's Motion for Summary Final Order should

not be granted. As of the date of this Summary Final Order of Dismissal, no response has been filed by Petitioners nor by Intervenor.

FINDINGS OF FACT

1. Braylon Roberts was born on February 3, 2009, at St. Joseph's Women's Hospital located in Tampa, Florida. Braylon's birth weight exceeded 2,500 grams.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Braylon. On July 1, July 9, and August 18, 2014, Dr. Willis performed a medical records review and wrote medical reports. In an affidavit dated December 29, 2014, he summarized his records review and opined as follows:

In summary, labor was induced at term with an uncomplicated spontaneous vaginal delivery. The newborn was not depressed and required no resuscitation after birth. Hospital course was uneventful until DOL 2 when seizure activity was noted. MRI was consistent with cerebral stroke.

The baby suffered a cerebral stroke at some time on DOL 2. Medical history of a normal spontaneous vaginal birth with no newborn depression and a normal initial newborn hospital course, suggests the stroke was not due to oxygen deprivation or mechanical trauma during labor, delivery or in the immediate post-delivery 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.

The additional records do not change any of the opinions expressed in the letter of 07/01/2014.

The FHR monitor tracing does not suggest fetal distress during labor. This would be in agreement with the previous opinion that the newborn stroke did not result from oxygen deprivation during labor.

3. NICA retained Raymond J. Fernandez, M.D.

(Dr. Fernandez), a pediatric neurologist, to examine Braylon and to review his medical records. Dr. Fernandez examined Braylon on October 6, 2014. In a medical report regarding his independent medical examination of Braylon, Dr. Fernandez opined as follows:

Braylon has a subtle (very mild) right hemiparesis that is not causing substantial motor impairment at this time and it is not predicted not [sic] to cause substantial motor impairment in the future. Speech is mildly to moderately delayed, but improving and he is improving with regard to basic learning skills in his regular kindergarten classroom setting. The ultimate outcome with regard to more complicated learning is indeterminate at this time, but he should continue to improve with appropriate input from teachers and family members.

Braylon's neurological injury was due to an ischemic stroke in the distribution of a branch of the left middle cerebral artery. His neurological injury was not caused by oxygen deprivation or mechanical injury due to an obstetrical event during labor, delivery, or in the immediate post delivery of [sic] resuscitation.

4. Dr. Fernandez confirmed his opinion in an affidavit dated January 7, 2015.^{1/}

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, delivery, or the immediate post-delivery period. Dr. Willis' opinion is credited. There are no contrary expert opinions filed that are contrary to Dr. Fernandez's opinion that although Braylon has a subtle (very mild) right hemiparesis, it is not causing, and is not predicted to cause, substantial motor impairment. Further, Dr. Fernandez also opined that Braylon's neurological injury was not caused by oxygen deprivation or mechanical injury due to an obstetrical event during labor, delivery, or in the immediate post-delivery or resuscitation. Dr. Fernandez'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. The evidence, which is not refuted, established that Braylon did not sustain an injury to the brain or spinal cord caused by oxygen deprivation or mechanical injury in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital. Therefore, Braylon is not eligible for benefits under the Plan.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that

1. The Petition filed by Melissa Roberts and Christopher Roberts, on behalf of Braylon Roberts, is dismissed with prejudice.

2. The final hearing scheduled for March 17, 2015, is cancelled.

DONE AND ORDERED this 6th day of March, 2015, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of March, 2015.

ENDNOTE

^{1/} The date of January 7, 2014, on Dr. Fernandez's affidavit is an apparent scrivener's error, as the Petition for Benefits was filed February 3, 2014, and Dr. Fernandez's examination of Braylon took place on October 6, 2014.

COPIES FURNISHED:
(via certified mail)

Kenney Shipley, Executive Director
Florida Birth Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail No. 7014 2120 0003 1048 2144)

Melissa Roberts
Christopher Roberts
7508 Camarina Calle
Tampa, Florida 33615
(Certified Mail No. 7014 2120 0003 1048 2151)

David S. Nelson, Esquire
La Cava and Jacobson, P.A.
Suite 2500
101 East Kennedy Boulevard
Tampa, Florida 33602
(eServed)
(Certified Mail No. 7014 2120 0003 1048 2168)

Robert J. Grace, Esquire
The Bleakley Bovol Law Firm
15170 North Florida Avenue
Tampa, Florida 33613
(eServed)
(Certified Mail No. 7014 2120 0003 1048 2175)

Melissa Roberts
Christopher Roberts
5832 Coventry Drive
Tampa, Florida 33615
(Certified Mail No. 7014 2120 0003 1048 2182)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7014 2120 0003 1048 2199)

Elizabeth Dudek, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified Mail No. 7014 2120 0003 1048 2205)

Yejide O. Sokoya, M.D.
Suite 6419
2021 North Lemans Boulevard
Tampa, Florida 33607
(Certified Mail No. 7014 2120 0003 1048 2212)

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).