

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAUL TRUST AND MEAGHAN TRUST, on  
behalf of and as parents and  
natural guardians of COLIN  
TRUST, a minor,

Petitioners,

vs.

Case No. 14-1436N

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 January 8, 2015.

STATEMENT OF THE CASE

On March 26, 2014, Petitioners, Paul Trust and Meaghan Trust, on behalf of and as parents and natural guardians of Colin Trust (Colin), 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 Gostal Arcelin, M.D., as the physician providing obstetric services at the birth of Colin at Boca Raton Regional Hospital in Boca Raton, Florida.

DOAH served NICA with a copy of the Petition on April 1, 2014. DOAH served Dr. Arcelin with a copy of the Petition on April 3, 2014. On April 7, 2014, DOAH received a return receipt from the United States Postal Service showing that Boca Raton Regional had been served with a copy of the Petition. Neither Dr. Arcelin nor Boca Raton Regional Hospital has petitioned to intervene in this proceeding.

On January 8, 2015, NICA filed a Motion for Summary Final Order, asserting that Colin 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 electronic mail on January 8, 2015.

#### FINDINGS OF FACT

1. Colin Trust was delivered on September 14, 2011, at Boca Raton Regional Hospital in Boca Raton, Florida. Colin weighed 3,370 grams at delivery.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Colin. In an affidavit dated January 8, 2015, Dr. Willis opined in pertinent part:

5. In summary, there was no fetal distress during labor and the baby was not depressed at birth and had a normal newborn hospital

course. Essentially, there was nothing to suggest oxygen deprivation during labor or delivery. The "previously healthy baby" was noted to have lack of head growth at two months of age and MRI evaluation found a large brain infarct, which did not appear to be recent.

It is most likely the cerebral infarct occurred at some time during pregnancy and prior to labor and delivery. Newborn depression and a complicated newborn hospital course would have been expected if the oxygen deprivation would have occurred during labor or delivery.

6. Colin Trust did suffer a stroke. A mechanical injury during labor and delivery or the immediate post-delivery period could not cause a stroke. Further, there was no mechanical injury that occurred here. The delivery was by C-section, no forceps were used and there was not a vacuum extraction; accordingly, there is no basis that could have been any mechanical trauma.

7. While oxygen deprivation can result in a stroke, as reflected by my Report, there was no evidence of any oxygen deprivation that occurred during labor, delivery or the immediate post-delivery period. Further, if there had been a stroke during this period of time, you would expect to see different symptoms once the child was born; there were no such symptoms. There is no medical basis to opine that Colin Trust suffered a stroke during the course of labor, delivery or the immediate post-delivery period as a result of either oxygen deprivation or mechanical injuries (neither of which even occurred here).

8. Accordingly, it is my opinion 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. The child has documented brain injury that most likely occurred at some time during pregnancy and before labor and delivery.

3. A review of the file in this case reveals that there has been no expert opinion filed that is contrary to the opinion of Dr. Willis. 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 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 Colin did not sustain an injury to his 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. Therefore, Colin 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 Paul Trust and Meaghan Trust, as parents and natural guardians of Colin Trust, is dismissed with prejudice. The final hearing scheduled for March 3, 2015, is cancelled.

DONE AND ORDERED this 22nd day of January, 2015, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 22nd day of January, 2015.

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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).