

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GIOVANNI PILLONATO, a minor, by
and through his parents and next
best friends, BETSY PINTO AND
DUSTIN PILLONATO, individually,

Petitioners,

vs.

Case No. 14-1980N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

WELLINGTON REGIONAL MEDICAL
CENTER, JULIE PASS, M.D., AND
OB/GYN SPECIALISTS OF THE PALM
BEACHES, P.A.,

Intervenors.

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PARTIAL SUMMARY FINAL ORDER

This cause came on for consideration upon Respondent's
Motion for Summary Final Order filed on October 13, 2014, by
Respondent, Florida Birth-Related Neurological Injury
Compensation Association (NICA).

STATEMENT OF THE CASE

On April 25, 2014, Petitioner, Giovanni Pillonato
(Giovanni), a minor, by and through his parents and next best
friends Betsy Pinto and Dustin Pillonato, filed a Petition Under

Protest for Determination of Eligibility for NICA Benefits Pursuant to Florida Statute 766.305 (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 Julie C. Pass, M.D., as the physician who provided obstetric services at the birth of Giovanni on January 8, 2012, at Wellington Regional Medical Center in West Palm Beach, Florida. It is the position of Petitioners that NICA does not apply on the grounds that proper NICA notice was not given by the hospital.

DOAH served NICA with a copy of the Petition on May 2, 2014. On May 7, 2014, DOAH received a return receipt from the United States Postal Service showing that Dr. Pass had been served with a copy of the Petition. On May 9, 2014, DOAH received a return receipt from the United States Postal Service showing that Wellington Regional Medical Center had been served with a copy of the Petition.

On May 1, 2014, Wellington Regional Medical Center filed a Petition to Intervene, which was granted by Order dated May 15, 2014. On October 7, 2014, Dr. Pass and OB/GYN Specialists of Palm Beaches, P.A., filed a Petition to Intervene, which was granted by Order dated October 15, 2014.

On October 13, 2014, NICA filed a Motion for Summary Final Order, on the issue of birth-related neurological injury. The

issue of notice, which Petitioners allege in the Petition Under Protest was not properly given by the hospital, was not referenced as a basis for the Motion. To date, no response has been filed to the Motion.

FINDINGS OF FACT

1. Giovanni Pillonato was born on January 8, 2012, at Wellington Regional Medical Center in West Palm Beach, Florida. Giovanni weighed in excess of 2,500 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), an obstetrician specializing in maternal-fetal medicine, was requested by NICA to review the medical records for Giovanni and his mother. In an affidavit dated October 8, 2014, Dr. Willis summarized his findings as follows:

It is my opinion that labor was complicated by an abnormal FHR pattern (fetal distress), which resulted in a depressed newborn. Cord blood gas had a pH of 6.8. The newborn hospital course was complicated by multi-organ failure, consistent with hypoxic injury at birth. EEG was markedly abnormal and MRI showed findings consistent with hypoxic brain injury.

As such, it is my opinion that there was an obstetrical event that resulted in loss of oxygen to the baby's brain during labor, delivery and continuing into the immediate post delivery period. The oxygen deprivation resulted in brain injury. I am not able to comment about the severity of the brain injury.

3. NICA retained Michael S. Duchowny, M.D. (Dr. Duchowny), as its expert in pediatric neurology who evaluated the medical records and examined Giovanni on August 27, 2014. Based on his examination Dr. Duchowny made the following findings:

In SUMMARY, Gio's neurologic examination reveals evidence of substantial mental and motor impairment characterized by spastic quadriparesis, microcephaly, and significant cognitive delay, particularly for language milestones. I regard these findings as permanent, although he certainly is capable of improvement over time.

A review of the medical records confirms his mother's history. Gio was born in Wellington Regional Hospital and transferred to St. Mary's Hospital for whole body cooling. His Apgar scores were 1, 4, and 7 at 1.5 and 10 minutes and he had evidence of severe metabolic acidosis at birth with a cord pH of 6.8. He was initially intubated in the delivery room, subsequently extubated but then reintubated until January 13, 2012. Seizures were noted in the newborn period. Gio developed disseminated intravascular coagulopathy with decreased fibrinogen levels and renal and hepatic dysfunction. He required transfusions with fresh frozen plasma. An MRI scan of the brain performed on January 20 revealed increased signal in the basal ganglia and thalami with some swelling of the cortex. No restricted diffusion was noted indicating that the MRI findings were not of recent onset.

4. In an affidavit dated October 10, 2014, Dr. Duchowny opined:

As such, it is my opinion that GIOVANNI PILLONATO'S medical records are consistent with hypoxic ischemic damage which was likely acquired during delivery and the immediate

postnatal period. For this reason, I am recommending Giovanni for inclusion within the NICA program.

5. The opinions of Dr. Willis and Dr. Duchowny's are credited. Based on their opinions, Giovanni sustained an injury to his brain during labor, delivery, and continuing into the immediate post-delivery period due to oxygen deprivation, which resulted in brain injury which rendered Giovanni permanently and substantially mentally and physically impaired.

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. In determining the issue of compensability, 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 Giovanni sustained a birth-related neurological injury and is eligible for benefits under the Plan.

12. Petitioners are entitled to proceed upon the issue of notice, and jurisdiction is reserved to make such a determination.

CONCLUSION

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

ORDERED:

1. Respondent's Motion for Summary Final Order on the issue of birth-related neurological injury is granted, and Petitioners' claim is found and determined to be compensable.

2. Jurisdiction is reserved to determine the issue of an award pursuant to section 766.31.

3. Jurisdiction is reserved to determine whether the notice requirements of section 766.316 were satisfied.

DONE AND ORDERED this 31st day of October, 2014, 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 31st day of October, 2014.

COPIES FURNISHED:
(via certified mail)

Darla L. Keen, Esquire
Lytal, Reiter, Smith, Ivey and Fronrath, LLP
Suite 1000
515 North Flagler Drive
West Palm Beach, Florida 33401
(Certified Mail No. 7014 1200 0002 3336 4488)

Kenney Shipley, Executive Director
Florida Birth Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(Certified Mail No. 7013 2630 0000 4177 1473)

David W. Black, Esquire
Frank, Weinberg and Black, P.L.
7805 Southwest 6th Court
Plantation, Florida 33324
(Certified Mail No. 7013 2630 0000 4177 1480)

Josh Bloom, Esquire
Lubell and Rosen
Suite 900
200 South Andrews Avenue
Fort Lauderdale, Florida 33301
(Certified Mail No. 7013 2630 0000 4177 1497)

Jeffery L. Blostein, Esquire
The Law Office of Jay Cohen, P.A.
Suite 1500
100 Southeast Third Avenue
Fort Lauderdale, Florida 33394
(Certified Mail No. 7013 2630 0000 4177 1503)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7013 2630 0000 4177 1510)

Elizabeth Dudek, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified Mail No. 7013 2630 0000 4177 1527)

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).