

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ASHLEE HAMMAC AND TIMOTHY  
JOLLEY, on behalf of and as  
parents and natural guardians of  
RYAN MICHAEL JOLLEY, a deceased  
minor,

Petitioner,

vs.

Case No. 14-2049N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent,

and

SHANDS LAKE SHORE REGIONAL  
MEDICAL CENTER,

Intervenor.

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SUMMARY FINAL ORDER

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

STATEMENT OF THE CASE

On May 1, 2014, Petitioners, Ashlee Hammac and Timothy Jolley, on behalf of and as parents and natural guardians of Ryan Michael Jolley (Ryan), 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 compensation under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Petition named Emad Atta, M.D., as the physician providing obstetric services at the birth of Ryan at Shands Lake Shore Regional Medical Center.

DOAH served NICA with a copy of the Petition on May 6, 2014. DOAH served Dr. Atta and Shands Lake Shore Regional Medical Center with copies of the Petition on May 7, 2014. On June 2, 2014, Shands Lake Shore Regional Medical Center filed Intervenor's, Motion to Intervene, which was granted by Order dated June 10, 2014. As of the date of this Summary Final Order, Dr. Atta has not petitioned to intervene in this proceeding.

On October 13, 2014, NICA filed an Unopposed Motion for Summary Final Order, asserting that Ryan did sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. NICA represented in the motion that neither Petitioners nor Intervenor opposed the granting of the motion.

#### FINDINGS OF FACT

1. Ryan Michael Jolley was born on October 11, 2013, at Shands Lake Shore Regional Medical Center (Shands Lake Shore). He weighed 2,880 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records of Ryan. In a report dated August 5, 2014, Dr. Willis opined as follows:

In summary, labor was complicated by a non-reassuring FHR pattern. The newborn was depressed with Apgar scores remaining low at five and ten minutes. Death occurred five days after delivery. Autopsy was consistent with severe hypoxic-ischemic encephalopathy.

There was apparent 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 was severe and resulted in brain injury and death.

3. 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. The opinion of Dr. Willis that Ryan did suffer an obstetrical event that resulted in loss of oxygen to the baby's brain during labor, delivery and continuing into the immediate post-delivery which resulted in brain injury and death, 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. 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.

8. 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.

9. The evidence, which is not refuted, established that Ryan did sustain an injury to the brain caused by oxygen deprivation occurring during labor, delivery, and continuing into the immediate post-delivery period in a hospital, which resulted

in brain injury and death. Petitioners' claim is compensable under the Plan.

#### CONCLUSION

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

ORDERED:

1. Respondent's Unopposed Motion for Summary Final Order is granted, and Ryan Michael Jolley sustained a birth-related neurological injury which is compensable under the Plan.

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

3. It is further ORDERED that the parties are accorded 30 days from the date of this Order to resolve, subject to approval of the administrative law judge, the amount and manner of payment of an award to Petitioners; the reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees and costs; and the amount owing for expenses previously incurred. If not resolved within such period, the parties shall so advise the administrative law judge, and a hearing will be scheduled to resolve such issues. Once resolved, an award will be made consistent with section 766.31.

DONE AND ORDERED this 16th day of October, 2014, in  
Tallahassee, Leon County, Florida.



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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 16th day of October, 2014.

COPIES FURNISHED:  
(via certified mail)

Peter W. Van den Boom, Esquire  
Frost Van den Boom, P.A.  
395 South Central Avenue  
Bartow, Florida 33830  
(Certified Mail No. 7013 2630 0000 4177 1398)

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 1404)

Jeffrey P. Brock, Esquire  
Smith Stout Bigman and Brock PA  
444 Seabreeze Boulevard, Suite 900  
Daytona Beach, Florida 32118  
(Certified Mail No. 7013 2630 0000 4177 1411)

Michael R. D'Lugo, Esquire  
Wicker, Smith, O'Hara, McCoy, Ford, P.A.  
Post Office Box 2753  
Orlando, Florida 32802  
(Certified Mail No. 7013 2630 0000 4177 1428)

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 1435)

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 1442)

Emad Atta, M.D.  
Womens Center of Florida  
Suite 1125  
351 Northeast Franklin Street  
Lake City, Florida 32055  
(Certified Mail No. 7013 2630 0000 4177 1459)

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).