

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ALLEA KATRIS BAILEY, on behalf
of and as parent and natural
guardian of KHALEYA ELLE BAILEY
JONES, a minor,

Petitioner,

vs.

Case No. 14-2054N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

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 June 30, 2014.

STATEMENT OF THE CASE

On May 1, 2014, Petitioner, Allea Katris Bailey, on behalf of and as parent and natural guardian of Khaleya Elle Bailey Jones (Khaleya), a minor, filed a Petition for Benefits Under Protest 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 Alexander Brickler, M.D., as the physician providing obstetrical services at the birth of Khaleya on October 18, 2007, at Tallahassee Memorial Hospital located in Tallahassee, Florida.

DOAH served NICA with a copy of the Petition on May 7, 2014. DOAH served a copy of the Petition on Dr. Brickler on May 8, 2014. DOAH served a copy of the Petition on Tallahassee Memorial Hospital on May 13, 2014. As of the date of this Summary Final Order of Dismissal, neither Dr. Brickler nor Tallahassee Memorial Hospital has petitioned to intervene in this proceeding.

On June 30, 2014, NICA filed a Motion for Summary Final Order, asserting that Khaleya did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. As of the date of this Summary Final Order of Dismissal, Petitioner has not filed a response to the Motion for Summary Final Order.

FINDINGS OF FACT

1. Khaleya Elle Bailey Jones was born on October 18, 2007, at Tallahassee Memorial Hospital in Tallahassee, Florida. Khaleya weighed 3,585 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Khaleya, 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. Dr. Willis described his findings as follows:

Delivery was by spontaneous vaginal birth. Birth weight was 3,585 grams. The newborn was not depressed. Apgar scores were 9/9. No resuscitation was required at birth. The baby went to the normal nursery. Nursery admission exam gives a diagnosis of "Term Newborn." Management recommendations were for routine care. The baby had an uneventful hospital course and was discharged home on DOL2.

3. In an affidavit dated June 26, 2014, Dr. Willis opined as follows:

In summary, pregnancy, labor and delivery were uncomplicated. The baby was not depressed at birth and had an uneventful newborn hospital course. Medical records do not suggest the baby suffered a birth related brain injury. 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 postdelivery period.

As such, it is my opinion that there was no oxygen deprivation or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate postdelivery period that resulted in loss of oxygen or mechanical injury to the baby's brain or spinal cord. Accordingly, there was no causal event which would have rendered the baby permanently and substantially mentally and physically impaired as a result of same.

4. 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 obstetrical event that resulted in loss of oxygen or mechanical injury to Khaleya's brain or spinal cord. His opinion is credited.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

6. 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.

7. 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.

8. 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.

9. 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.

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 Khaleya did not sustain an injury to the 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 in a hospital. Therefore, Khaleya 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 Allea Katris Bailey on behalf of and as parent and natural guardian of Khaleya Elle Bailey Jones is dismissed with prejudice.

DONE AND ORDERED this 15th day of July, 2014, in
Tallahassee, Leon County, Florida.

Susan Belyeu Kirkland

SUSAN BELYEU KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
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this 15th day of July, 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).