

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KIKILIA SNELL, on behalf of and
as parent and natural guardian
of KY'MON TRAVIS, a deceased
minor,

Petitioner,

vs.

Case No. 14-2818N

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 September 23, 2014.

STATEMENT OF THE CASE

On June 16, 2014, Petitioner, Kikilia Snell, on behalf of and as parent and natural guardian of Ky'Mon Travis (Ky'Mon), a deceased minor, filed a Petition 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 Orlando Muniz, M.D., as the physician providing obstetric services at the birth of Ky'Mon at Jackson Hospital in Marianna, Florida.

DOAH served NICA with a copy of the Petition on June 20, 2014. DOAH served Dr. Muniz and Jackson Hospital with a copy of the Petition on June 20, 2014. Neither Dr. Muniz nor Jackson Hospital has petitioned to intervene in this proceeding.

On September 23, 2014, NICA filed a Motion for Summary Final Order, asserting that Ky'Mon 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 United States Mail on September 23, 2014.

An Order to Show Cause was entered on October 7, 2014, advising Petitioner to show cause in writing why Respondent's Motion for Summary Final Order should not be granted. To date, no response has been filed.

FINDINGS OF FACT

1. Ky'Mon Travis was delivered on July 12, 2012, at Jackson Hospital in Marianna, Florida. Ky'Mon weighed 4,735 grams at delivery.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Ky'Mon. In an affidavit dated September 16, 2014, Dr. Willis opined in pertinent part:

5. I have reviewed the medical records for the above individual. The mother, Kikilia Snell was a 35 year old G3 P2002 with a history of Diabetes managed with diet. Maternal weight was > 300 lbs. Diabetes was poorly controlled. Her HbA1C was significantly elevated at 8.7% at her initial prenatal visit. Normal would be < 6%. HbA1C is a reflection of blood glucose levels over the past several weeks. I did not see any medical records concerning further management of the Diabetes during pregnancy.

6. The mother presented to her physician at 38 weeks gestational age with the complaint of not feeling the baby move for one day. She was sent to the hospital for delivery.

7. Hydramnios was diagnosed at time of rupture of the membranes. The fetal heart rate (FHR) monitor during labor was reviewed. The FHR tracing was abnormal on admission to the hospital and progressively worsened during labor. The initial FHR pattern showed a normal baseline heart rate, but markedly reduced variability. Variable FHR decelerations began about three hours after admission with FHR variability essentially absent. The abnormal FHR pattern progressed to terminal bradycardia with a heart rate of about 40 bpm when the monitor was removed for delivery.

8. Emergency Cesarean section was done for the abnormal FHR pattern. Birth weight was 4,735 grams. There was no heart rate detected at birth. Apgar scores were 0/0. Resuscitation was unsuccessful and death was pronounced. A heart rate was never obtained after birth or during resuscitation.

9. Autopsy found a thin subdural hemorrhage and enlarged fetal organs.

10. In summary, the mother was a poorly controlled diabetic that presented at 38 weeks with no fetal movement for one day.

FHR monitoring during labor was consistent with severe fetal distress. Emergency Cesarean section delivery resulted in a still birth. There was no heart rate at delivery and no heart rate was obtained during resuscitation. Resuscitation was stopped and the baby pronounced dead shortly after birth.

11. There was an apparent obstetrical [sic] even that resulted in loss of oxygen to the fetus during labor and delivery. The oxygen deprivation resulted in demise stillbirth. The baby could not be resuscitated and pronounced dead shortly after birth. This was not a live birth.

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 an apparent obstetrical event that resulted in loss of oxygen to the fetus during labor and delivery which resulted in demise stillbirth, that the baby could not be resuscitated and was pronounced dead shortly after birth, 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 the birth of Ky'Mon was not a live birth. Therefore, Petitioner 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 Kikilia Snell, as parent and natural guardian of Ky'Mon Travis, is dismissed with prejudice.

DONE AND ORDERED this 23rd 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 23rd day of October, 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
(Certified Mail No. 7012 3050 0001 0079 5622)

Kikilia Snell
2431 Sapp Road, Lot 4
Cottondale, Florida 32431
(Certified Mail No. 7012 3050 0001 0079 5639)

Martin P. McDonnell, Esquire
Rutledge, Ecenia, and Purnell, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
(Certified Mail No. 7012 3050 0001 0079 5646)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7012 3050 0001 0079 5653)

Elizabeth Dudek, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified Mail No. 7012 3050 0001 0079 5660)

Orlando S. Muniz, M.D.
4230 Hospital Drive, Suite 209
Marianna, Florida 32446
(Certified Mail No. 7012 3050 0001 0079 5677)

Jackson Hospital
Attention: Risk Management
4250 Hospital Drive
Marianna, Florida 32446
(Certified Mail No. 7014 1200 0002 3336 4303)

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).