

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

KATHERINE NOBLES, a/k/a  
KATHERINE JOHNSON, on behalf of  
and as parent and natural  
guardian of JINGER-ANNE NOBLES,  
a minor,

Petitioner,

vs.

Case No. 14-2978N

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 February 25, 2015.

STATEMENT OF THE CASE

On June 19, 2014, Petitioner, Katherine Nobles, a/k/a Katherine Johnson, on behalf of and as parent and natural guardian of Jinger-Anne Nobles (Jinger-Anne), 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 Shivakumar Hanubal, M.D., as the physician providing obstetrical services at the birth of Jinger-Anne on February 14, 2011, at Leesburg Regional Medical Center located in Leesburg, Florida.

DOAH served NICA with a copy of the Petition on June 26, 2014. DOAH served Leesburg Regional Medical Center with a copy of the Petition on June 30, 2014. DOAH served Shivakumar Hanubal, M.D., with a copy of the Petition on October 27, 2014.

On February 25, 2015, NICA filed a Motion for Summary Final Order, asserting that Jinger-Anne 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, no petitions to intervene have been filed by Dr. Hanubal or Leesburg Regional Medical Center.

#### FINDINGS OF FACT

1. Jinger-Anne Nobles was born on February 14, 2011, at Leesburg Regional Medical Center located in Leesburg, Florida. Jinger-Anne weighed in excess of 2,500 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Jinger-Anne. In a medical report dated July 14, 2014, Dr. Willis opined as follows:

I have reviewed the medical records for the above individual. The mother, Katherine Johnson, was a 26 year old G4 P2 with no

significant prenatal problems. The mother presented to the hospital in early labor at 38 weeks gestational age. Antibiotics were given during labor for a positive vaginal culture for Group B Streptococcus. Amniotic membranes were ruptured with clear fluid.

Fetal heart rate (FHR) monitor tracing during labor was reviewed. Baseline heart rate was 135 bpm with normal variability. There was no fetal distress during labor.

Spontaneous vaginal delivery was uncomplicated. Birth weight was 2,890 grams. Apgar scores were 8/9. The newborn was not depressed. No resuscitation was required. The baby was taken to the nursery and stated to be in stable condition. Newborn hospital course was uncomplicated.

The baby was re-admitted to the hospital twice during the first two weeks after birth. The first was two days after newborn hospital discharge. This admission was for elevated bilirubin level. The second was for choking and vomiting with possible cyanosis. No etiology was discovered and the baby was discharged home.

In summary, the baby was delivered at term by spontaneous and uncomplicated vaginal birth. There was no fetal distress during labor. The newborn was not depressed and had a normal hospital course.

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.

3. Dr. Willis reaffirmed his opinion in an affidavit dated December 29, 2014.

4. NICA retained Michael S. Duchowny, M.D. (Dr. Duchowny), a pediatric neurologist, to examine Jinger-Anne and to review her medical records. Dr. Duchowny examined Jinger-Anne on October 1, 2014. In an affidavit dated December 22, 2014, regarding his independent medical examination of Jinger-Anne, Dr. Duchowny opined as follows:

In summary, Jinger-Anne's examination reveals findings consistent with a substantial mental and motor impairment. She evidences spastic quadriparesis, microcephaly, cortical visual impairment, optic nerve atrophy, no evidence of receptive or expressive language development, and generalized hyperreflexia.

I have had an opportunity to review medical records sent on May 21, 2014. They document the pre and perinatal history and provide evidence of hyperbilirubinemia, but only to a level of 15. Jinger-Anne's mother had presented to the hospital in early labor and had artificial rupture of membranes. Her mother had a postpartum tubal ligation. Jinger-Anne's Apgar scores were 8 and 9 at 1 and 5 minutes and her birth weight was 6 pounds 6 ounces. Cord blood gases were not drawn and apart from hyperbilirubinemia, her postnatal course was uncomplicated. Her readmission on February 18 documented a rapid rise in bilirubin, reaching a peak level of 15.4. She was also diagnosed with an acute life-threatening event which after evaluation was believed to be caused by gastroesophageal reflux.

I have not yet received either of the MRI scans. Although Jinger-Anne's course would be extremely atypical of kernicterus as most affected individuals have normal cognitive status and present with findings consistent with athetotic cerebral palsy, I believe it is prudent to review the MR images in this

case before making a final recommendation with regard to consideration for acceptance into the NICA program.

ADDENDUM: I have reviewed the brain MR images obtained on July 8, 2011. The study reveals no significant abnormalities. Of note, the basal ganglia and thalami are normal. The study findings support my initial impression that Jinger-Anne's neurological problems did not result from hyperbilirubinemia, mechanical injury or oxygen deprivation acquired in the course of labor, delivery or the immediate post-delivery period.

5. 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 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. Dr. Willis' opinion is credited. There are no expert opinions filed that are contrary to Dr. Duchowny's opinion that although Jinger-Anne's examination reveals findings consistent with a substantial mental and motor impairment, her neurological problems did not result from hyperbilirubinemia, mechanical injury or oxygen deprivation acquired in the course of labor, delivery or the immediate post-delivery period. Dr. Duchowny's opinion is credited.

## 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. 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.

10. 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.

11. 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.

12. The evidence, which is not refuted, established that Jinger-Anne did not sustain an injury to the brain or spinal cord caused by oxygen deprivation or mechanical injury in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital. Therefore, Jinger-Anne is not eligible for benefits under the Plan.

#### CONCLUSION

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

1. The Petition filed by Katherine Nobles, a/k/a Katherine Johnson, on behalf of Jinger-Anne Nobles, is dismissed with prejudice.

2. The final hearing scheduled for March 23, 2015, is cancelled.



DONE AND ORDERED this 9th day of March, 2015, in  
Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
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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).