

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MEGAN EXANTUS, on behalf of and
as parent and natural guardian
of KAIDYN HANCOCK, a minor,

Petitioner,

vs.

Case No. 14-3031N

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 July 8, 2015.

STATEMENT OF THE CASE

On June 20, 2014, Petitioner, Megan Exantus, on behalf of and as parent and natural guardian of Kaidyn Hancock (Kaidyn), 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 Glenda A. Phillips, ARNP, CNM, as the nurse/midwife providing obstetrical

services at the birth of Kaidyn on January 30, 2012, at Memorial Hospital Jacksonville located in Jacksonville, Florida.

DOAH served NICA and Memorial Hospital Jacksonville with a copy of the Petition on July 1, 2014. DOAH served Glenda A. Phillips, ARNP, CNM, with a copy of the Petition on July 2, 2014.

As of the date of this Summary Final Order of Dismissal, no petition to intervene has been filed by Memorial Hospital Jacksonville or Glenda A. Phillips, ARNP, CNM.

On July 8, 2015, NICA filed a Motion for Summary Final Order, asserting that Kaidyn did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. On July 8, 2015, Petitioner filed a Response to the Motion for Summary Final Order serving notice that Petitioner will not be filing any substantive response to NICA's Motion for Summary Final Order.

FINDINGS OF FACT

1. Kaidyn was born on January 30, 2012, at Memorial Hospital Jacksonville located in Jacksonville, Florida. Kaidyn 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 Kaidyn. In a medical report dated August 20, 2014, Dr. Willis opined as follows:

In summary, pregnancy, labor and delivery were essentially uncomplicated. There was no

fetal distress during labor. Spontaneous vaginal delivery was uncomplicated.

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. NICA retained Michael S. Duchowny, M.D. (Dr. Duchowny), a pediatric neurologist, to examine Kaidyn and to review her medical records. Dr. Duchowny examined Kaidyn on September 24, 2014. In a medical report dated September 30, 2014, regarding his independent medical examination of Kaidyn, Dr. Duchowny opined as follows:

In summary, Kaidyn's neurologic examination reveals findings consistent with a substantial mental and physical impairment. She has spastic quadriparesis, microcephaly, and absence of both expressive and receptive language ability. She additionally evidences mid-facial dysmorphism. There is no significant lateralization to her findings.

I reviewed records sent from your office which were sent on May 21, 2014 and confirm the family's impression of a relatively normal prenatal course and labor and delivery with the single exception of meconium-stained amniotic fluid ingestion. Kaidyn's Apgar scores were 6 and 9 at 1 & 5 minutes and she did not require intubation or ventilatory support. There is no evidence of multi-organ system involvement or neurologic dysfunction and both mother and child were discharged from the hospital at the usual time.

In view of these findings together with a normal MRI scan of the brain obtained on November 6, 2012, I consider it unlikely that Kaidyn's neurologic impairments were acquired

in the course of labor or delivery. Rather, Kaidyn's present disabilities are more likely to result from unknown prenatal factors, possibly genetic in origin. I therefore do not recommend that Kaidyn be considered for compensation within the NICA program.

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 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 Kaidyn's examination reveals findings consistent with a substantial mental and physical impairment, her impairments did not result from either oxygen deprivation or mechanical injury acquired in the course of labor or delivery. Dr. Duchowny's 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 Kaidyn 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, Kaidyn 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 Megan Exantus, on behalf of Kaidyn Hancock, is dismissed with prejudice.

2. The final hearing scheduled for July 28, 2015, is cancelled.

DONE AND ORDERED this 15th day of July, 2015, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of July, 2015.

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).