

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CLARA LYLE AND DEMETRIS WALKER,  
on behalf of and as parents and  
natural guardians of UZZIAH  
WALKER, a minor,

Petitioners,

vs.

Case No. 14-3625N

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 June 15, 2015.

STATEMENT OF THE CASE

On May 12, 2014, Petitioners, Carla Lyle and Demetris Walker, on behalf of and as parents and natural guardians of Uzziah Walker (Uzziah), 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

Tracy A. Thomas-Doyle, M.D., as the physician providing obstetrical services at the birth of Uzziah on November 23, 2012, at Sacred Heart Hospital located in Pensacola, Florida.

DOAH served NICA with a copy of the Petition on August 8, 2014. DOAH served Tracy A. Thomas-Doyle, M.D., with a copy of the Petition on August 11, 2014. DOAH served Sacred Heart Hospital with a copy of the Petition on October 26, 2014.

Neither Tracy A. Thomas-Doyle, M.D., nor Sacred Heart Hospital has petitioned to intervene in this proceeding.

On June 15, 2015, NICA filed a Motion for Summary Final Order, asserting that Uzziah did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes.

An Order to Show Cause was entered on June 30, 2015, advising Petitioners to show cause in writing no later than June 17, 2015, why Respondent's Motion for Summary Final Order should not be granted. To date, no response has been filed.

#### FINDINGS OF FACT

1. Uzziah Walker was born on November 23, 2012, at Sacred Heart Hospital located in Pensacola, Florida. Uzziah 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 Uzziah. In an affidavit dated

May 24, 2015, Dr. Willis described his findings in pertinent part as follows:

10. In summary, there was no apparent fetal distress during labor. Spontaneous vaginal delivery resulted in a large subgaleal hemorrhage with blood loss and poor perfusion. The baby was not hypoxic at birth. Cord blood gas was normal (pH 7.25). However, blood loss from the scalp hemorrhage and poor perfusion resulted in intraventricular hemorrhage during the immediate post delivery period.

11. There was an apparent obstetrical event that resulted in scalp hemorrhage and poor perfusion with loss of oxygen to the baby's brain during the immediate post delivery period. The poor perfusion resulted in brain injury. I am unable to comment about the severity of the brain injury.

3. NICA retained Michael Duchowny, M.D. (Dr. Duchowny), a pediatric neurologist, to examine Uzziah and to review his medical records. Dr. Duchowny examined Uzziah on March 11, 2015. In an affidavit dated May 29, 2015, Dr. Duchowny opined in pertinent part as follows:

19. Review of medical records and imaging studies sent on February 4 and 6, 2015 was performed. They detail Uzziah's birth at Baptist Hospital Health System in Pensacola with a forceps assisted delivery after a rapid decent. Uzziah evidenced tachycardia and some retractions at the time of delivery but his Apgar scores were 7 and 8. He was observed to have a subgaleal hematoma; a CT scan of the brain on November 23 revealed a large soft tissue hematoma and a small collection of subdural blood over the right cerebellar tent with a small amount of right ventricular hemorrhage. Of note, there was

no cerebral edema or ventricular compression. No skull fractures were noted despite bilateral subgaleal hematomas. The neonatal course was otherwise uncomplicated.

20. In summary, Uzziah's neurological examination today reveals normal findings. He does not exhibit either mental or physical impairment and his overall development has caught up and is proceeding in an age appropriate fashion. I believe that Uzziah's perinatal hematomas were resorbed without residual brain injury and his future prognosis is excellent. I explained to his family that Uzziah is doing very well and that his future is favorable from a prognostic standpoint. Given Uzziah's normal neurological status today, I am not recommending compensation with the NICA program.

4. A review of the file in this case reveals that there have been no opinions filed that are contrary to the opinion of Dr. Willis that there was an apparent obstetrical event that resulted in scalp hemorrhage and poor perfusion with loss of oxygen to the baby's brain during the immediate post-delivery period, and that the poor perfusion resulted in brain injury. Dr. Willis' opinion is credited. There are no opinions filed that are contrary to Dr. Duchowny's opinion that Uzziah's overall development is proceeding in an age appropriate fashion and does not exhibit either mental or physical impairment. 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 there was an apparent obstetrical event that resulted in scalp hemorrhage and poor perfusion with loss of oxygen to the baby's brain during the immediate post-delivery period, which resulted in brain injury. However, the evidence established that Uzziah is developing in an age appropriate fashion and does not exhibit either mental or physical impairment. Because section 766.302(2) requires that the brain injury render the infant permanently and substantially mentally and physically impaired, Uzziah 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 Clara Lyle and Demetris Walker, on behalf of and as parents and natural guardians of Uzziah Walker, is dismissed with prejudice, and the final hearing scheduled for September 9, 2015, is canceled.

DONE AND ORDERED this 22nd day of July, 2015, in  
Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 22nd day of July, 2015.

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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).