

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JENNIFER DE LA ROSA,
individually and as Personal
Representative of the Estate of
SOPHIA GRANT, deceased,

Petitioner,

vs.

Case No. 14-3730N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION, a/k/a NICA,

Respondent,

and

ST. JOSEPH'S HOSPITAL, INC., AND
AREEJ SALEM, M.D.,

Intervenors.

PARTIAL SUMMARY FINAL ORDER

This cause came on for consideration upon Respondent's Unopposed Motion for Partial Summary Final Order filed on June 1, 2015, by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA).

STATEMENT OF THE CASE

On August 11, 2014, Petitioner, Jennifer de la Rosa, individually and as Personal Representative of the Estate of Sophia Grant (Sophia), deceased, 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 Areej Salem, M.D., as the physician who provided obstetric services at the birth of Sophia on May 20, 2012, at St. Joseph's Hospital in Lutz, Florida.

DOAH served NICA and St. Joseph's Hospital with a copy of the Petition on August 18, 2014. DOAH served Areej Jamil Salem, M.D., with a copy of the Petition on August 12 and 18, 2014.

On September 11, 2014, St. Joseph's Hospital filed a Petition for Leave to Intervene, which was granted by Order dated September 15, 2014. On September 16, 2014, Dr. Areej Salem filed a Motion to Intervene, which was granted by Order dated September 26, 2014.

On June 1, 2015, NICA filed an Unopposed Motion for Summary Final Order, on the issue of birth-related neurological injury.^{1/}

FINDINGS OF FACT

1. Sophia Grant was born on May 20, 2012, at St. Joseph's Hospital in Lutz, Florida. Sophia weighed in excess of 2,500 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), an obstetrician specializing in maternal-fetal medicine, was requested by NICA to review the medical records for Sophia and her mother. In a

report dated September 22, 2014, Dr. Willis summarized his findings as follows:

In summary, the mother had a post-dates pregnancy complicated by prolonged labor, non-reassuring FHR pattern during labor and a difficult delivery. The baby was depressed at birth and never recovered. Cord blood gas was consistent with acidosis with a pH of 6.9. Despite cooling protocol for HIE, no electrical activity was noted on EEG and Neurology evaluation was consistent with brain death.

There was an apparent obstetrical event that resulted in loss of oxygen to the baby's brain during labor, delivery and continuing into the immediate post delivery period. The oxygen deprivation resulted in severe brain injury and death.

3. 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. The opinion of Dr. Willis that Sophia did suffer an obstetrical event that resulted in loss of oxygen to the baby's brain during labor, delivery and continuing into the immediate post-delivery period, which resulted in severe brain injury and death, 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 brain-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. 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.

8. 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.

9. The evidence, which is not refuted, established that Sophia did sustain an injury to the brain caused by oxygen deprivation occurring during labor, delivery and continuing into the immediate post-delivery period which resulted in severe brain

injury and death. Thus, Sophia sustained a birth-related neurological injury and is eligible for benefits under the Plan.

CONCLUSION

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

ORDERED:

1. Respondent's Motion for Partial Summary Final Order on the issue of birth-related neurological injury is granted, and Petitioner's claim is found and determined to be compensable.

2. Jurisdiction is reserved to determine the issue of an award pursuant to section 766.31.

3. Jurisdiction is reserved to determine whether the notice requirements of section 766.316 were satisfied.

DONE AND ORDERED this 5th day of June, 2015, 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 5th day of June, 2015.

ENDNOTE

^{1/} On May 26, 2015, Intervenor Areej Salem, M.D., filed a Motion for Summary Final Order addressing the issues of compensability and notice. On May 28, 2015, Intervenor St. Joseph's Hospital filed a Motion for Partial Summary Final Order addressing the issues of compensability and notice. These motions will be addressed by separate order.

COPIES FURNISHED:
(via certified mail)

Kenney Shipley, Executive Director
Florida Birth Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8200)

Michael R. D'Lugo, Esquire
Wicker, Smith, O'Hara, McCoy, Ford, P.A.
Post Office Box 2753
Orlando, Florida 32802
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8217)

Jeffrey P. Brock, Esquire
Smith Stout Bigman and Brock PA
444 Seabreeze Boulevard, Suite 900
Daytona Beach, Florida 32118
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8224)

James A. Martin, Jr., Esquire
Macfarlane Ferguson & McMullen
625 Court Street, Suite 200
Clearwater, Florida 33756
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8231)

Maria D. Tejedor, Esquire
Diez-Arguelles & Tejedor
505 North Mills Ave.
Orlando, Florida 32803
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8248)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7014 2120 0003 1052 8255)

Elizabeth Dudek, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified Mail No. 7014 2120 0003 1052 8262)

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).