

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RAYMOND D. LIGHT AND JESSICA  
LIGHT, individually and on  
behalf of OWEN LIGHT, a minor,

Petitioners,

vs.

Case No. 14-4571N

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

Respondent,

and

ADVENTIST HEALTH SYSTEM/SUNBELT,  
INC., d/b/a FLORIDA HOSPITAL  
ALTAMONTE AND THOMAS PAUL  
ENYART, M.D.,

Intervenors.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon a Renewed Motion for Summary Final Order filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), on August 3, 2015.

STATEMENT OF THE CASE

On September 25, 2014, Petitioners, Raymond D. and Jessica Light, individually and on behalf of Owen Light (Owen), a 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 Thomas Enyart, M.D., as the physician providing obstetrical services at the birth of Owen on November 26, 2013, at Florida Hospital Altamonte in Altamonte Springs, Florida.

DOAH served NICA and Florida Hospital Altamonte with a copy of the Petition on October 7, 2014. DOAH served a copy of the Petition on Thomas Enyart, M.D., on October 6, 2014.

On October 16, 2014, Adventist Health Systems/Sunbelt Inc., d/b/a Florida Hospital Altamonte and Thomas Enyart, M.D., filed a Petition to Intervene which was granted by Order dated October 24, 2014.

On January 21, 2015, NICA filed a Motion for Summary Final Order, asserting that Owen did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. Intervenors filed a Response in opposition. The Motion for Summary Final Order was denied without prejudice by Order dated February 6, 2015.

On August 3, 2015, NICA filed a Renewed Motion for Summary Final Order. On August 12, 2015, Intervenors filed a Notice of Non-opposition to NICA's Renewed Motion for Summary Final Order. No response to the Motion was filed by Petitioners.

## FINDINGS OF FACT

1. Owen Light was born on November 26, 2013, at Florida Hospital Altamonte located in Altamonte Springs, Florida. Owen weighed 3,980 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Owen, to determine whether an injury occurred in a hospital due to oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period.

3. Dr. Willis described his findings in pertinent part as follows in a medical report dated November 3, 2014:

In summary, there was no obvious distress during labor or delivery. The newborn was not depressed. Apgar scores were 9/9. The initial exam in the nursery noted some decreased muscle tone, but no acute distress. The baby was apparently doing well until about 12-hours after birth, when seizure activity was noted. Imaging studies showed venous thrombosis in the dural sinus.

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. The baby suffered brain injury, as indicated by the abnormal EEG and imaging studies of a venous thrombosis in the dural sinus. However, the brain injury does not appear to be related to either mechanical trauma or hypoxic injury during labor, delivery or the immediate post-delivery period.

4. Dr. Willis reaffirmed his opinion in an affidavit dated January 20, 2015, 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.

5. NICA retained Laufey Y. Sigurdardottir, M.D. (Dr. Sigurdardottir), a pediatric neurologist, to examine Owen and to review his medical records. Dr. Sigurdardottir examined Owen on July 22, 2015, and opined in pertinent part as follows in an affidavit dated August 3, 2015:

5. The opinions expressed in my Report are accurate and my opinions are as follows:

A. The patient is found to have a permanent substantial mental and physical impairment and is overall functioning at approximately a 7-9 month level at the biologic age of 19-20 months. He is noted to have hypotonia, delayed gross and fine motor skills, a past history of epilepsy, delayed visual maturation, although no periods of stagnation or developmental regression have been noted.

B. There is little evidence from the records that we have reviewed to suggest a perinatal ischemic or mechanical injury as the cause for his delays. Prenatal care was complete and documentation during the vaginal delivery was continuous revealing only 2 brief periods of mild fetal heart rate deceleration. Upon delivery, there was no indication of an acute ischemic event with normal Apgar scores of 9 after 1 minute and 9 after 5 minutes. There is documentation from a consulting geneticist that mom described possible prenatal seizure-like events, although a clear description was not given. The patient certainly had an

abnormal immature EEG and seizure activity that continued for a few weeks. MRI findings have not been consistent with a profound ischemic event, in fact been completely normal. At this time, it is more likely that Owen has delays in his gross and fine motor skills as well as delayed cognitive development due to a congenital disorder that seems non-progressive in nature. He seems to be receiving excellent care provided to him by his parents and caretakers.

C. At this time, it is difficult to measure Owen's global cognition but based on acquired skills he functions at a 7-8 month level at the age of 19 months. This would be considered a developmental quotient of 40-45. His life expectancy is not felt to be limited if he shows ongoing developmental progress. He is likely to need lifelong care.

6. I therefore am not recommending Owen to be included into the NICA program.

6. 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. Sigurdardottir's opinion that although Owen has both a substantial mental and physical impairment, it is more likely that his neurological impairments are due to a congenital disorder and not due to either mechanical injury or oxygen deprivation during labor,

delivery or the immediate post-delivery period.

Dr. Sigurdardottir's opinion is credited.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. The evidence, which is not refuted, established that Owen did not sustain an injury to the brain or spinal cord caused by oxygen deprivation occurring during labor, delivery, or the immediate post-delivery period. Therefore, Owen 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 Under Protest filed by Raymond D. and Jessica Light, individually and on behalf of Owen Light, is dismissed with prejudice.

2. The final hearing scheduled for September 29, 2015, is cancelled.



DONE AND ORDERED this 19th day of August, 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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this 19th day of August, 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).