

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN GARRETT PRICE AND MIRANDA
E. PRICE, individually and on
behalf of AURORA PRICE, a minor,

Petitioners,

vs.

Case No. 14-5123N

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

Respondent,

and

UNIVERSITY OF FLORIDA BOARD OF
TRUSTEES AND SHANDS TEACHING
HOSPITAL AND CLINICS, INC.,
d/b/a UNIVERSITY OF FLORIDA
HEALTH SHANDS HOSPITAL,

Intervenors.

_____ /

AMENDED PARTIAL SUMMARY FINAL ORDER

This cause came on for consideration upon Respondent's Motion for Summary Final Order filed on August 27, 2015, by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA).

STATEMENT OF THE CASE

On October 24, 2014, Petitioners, John Garrett Price and Miranda E. Price, individually and on behalf of Aurora Price (Aurora), 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 Shireen Madani Sims, M.D., as the physician who provided obstetric services at the birth of Aurora on May 5, 2012, at Shands at the University of Florida (Shands), in Gainesville, Florida.

DOAH served NICA with a copy of the Petition on October 31, 2014. DOAH served Shireen Madani Sims, M.D., with a copy of the Petition on November 3, 2014. DOAH served Shands with a copy of the Petition on November 19, 2014.

On November 24, 2014, Petitions to Intervene were filed by both the University of Florida Board of Trustees and Shands Teaching Hospital and Clinics, Inc., d/b/a University of Florida Health Shands. On December 9, 2014, an Order was entered granting both petitions to intervene.

On August 27, 2015, NICA filed a Motion for Summary Final Order on the issue of birth-related neurological injury. On September 9, 2015, the Intervenors filed a Joint Notice of Joinder in Respondent's Motion for Summary Final Order. On September 15, 2015, Petitioner filed an Objection/Response to Respondent's Motion for Summary Final Order. On September 24, 2015, Respondent filed a response to Petitioners'

Objection/Response to Respondent's Motion for Summary Final Order.

FINDINGS OF FACT

1. Aurora Price was born on May 5, 2012, at Shands at the University of Florida, in Gainesville, Florida. Aurora 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 Aurora and her mother. In a report dated December 15, 2014, Dr. Willis summarized his findings as follows:

In summary, labor was induced for post-dates and complicated by shoulder dystocia. The baby was depressed at birth and had a complicated hospital course with multisystem organ failure, consistent with birth hypoxia. Seizure activity was present shortly after birth. MIR was consistent with a hypoxic event.

There was an apparent obstetrical event that resulted in loss of oxygen to the baby's brain during delivery and continuing into the immediate post delivery period. I do not have an opinion about any oxygen deprivation during labor, since the FHR monitor tracings were not available. The oxygen deprivation at birth resulted in brain injury. I am not able to comment about the severity of the brain injury.

3. In An affidavit dated August 21, 2015, Dr. Willis reaffirmed his opinion that there was an apparent obstetrical

event that resulted in loss of oxygen to the baby's brain during delivery and continuing into the immediate post delivery period.

4. NICA retained Raymond J. Fernandez, M.D. (Dr. Fernandez), a pediatric neurologist, to examine Aurora and to review her medical records. Dr. Fernandez examined Aurora on June 25, 2015. In a medical report dated June 25, 2015, Dr. Fernandez opined as follows:

IMPRESSION:

Substantial mental and motor impairment that will be permanent, due to oxygen deprivation suffered during delivery and extending into the immediate post delivery period of resuscitation. I could not find that the umbilical artery blood pH was measured, but there was an elevated base excess measured in the first arterial blood pH performed in the NICU. In the NICU, Aurora met the criteria for cooling for hypoxic ischemic encephalopathy. There was neurological evidence for hypoxic ischemic encephalopathy, as well as multiorgan involvement. Brain MRIs showed evidence for hypoxic ischemic brain injury.

While Aurora is not microcephalic, she has experienced significant deceleration in rate of head growth, which is indicative of permanent brain injury.

5. In an affidavit dated August 21, 2015, Dr. Fernandez reaffirmed his opinion that Aurora's substantial mental and motor impairment will be permanent, due to oxygen deprivation suffered during delivery and extending into the immediate post delivery period.

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. The opinion of Dr. Willis that Aurora did suffer an obstetrical event that resulted in loss of oxygen to the baby's brain during delivery and continuing into the immediate post-delivery period, is credited. There are no opinions filed that are contrary to Dr. Fernandez's opinion that there is clear evidence that Aurora sustained substantial mental and motor impairment that will be permanent, due to oxygen deprivation suffered during delivery and extending into the immediate post delivery period of resuscitation. Dr. Fernandez'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 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.

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 unrebutted, established that Aurora did sustain an injury to the brain caused by oxygen deprivation occurring during delivery and continuing into the immediate post-delivery period which rendered her permanently and substantially mentally and physically impaired. Thus, Aurora 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 28th day of October, 2015, in Tallahassee, Leon County, Florida.



W. DAVID WATKINS
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 28th day of October, 2015.

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 0000 0356 8698)

Maria D. Tejedor, Esquire
Diez-Arguelles & Tejedor
505 North Mills Avenue
Orlando, Florida 32803
(eServed)
(Certified Mail No. 7014 2120 0003 1051 0533)

M. Mark Bajalia, Esquire
Bajalia Law
Suite 301
11512 Lake Mead Avenue
Jacksonville, Florida 32256
(eServed)
(Certified Mail No. 7014 2120 0003 1051 0540)

Daniel Joseph D'Alesio, Esquire
University of Florida J Hillis Miller Health Center
Self-Insurance Program
Tower 1, 7th Floor
580 West 8th Street
Jacksonville, Florida 32209
(eServed)
(Certified Mail No. 7014 2120 0003 1051 0557)

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 1051 0564)

Elizabeth Dudek, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail No. 7014 2120 0003 1051 0571)

Shireen Madani Sims, M.D.
Room M-302
1600 Southwest Archer Road
Gainesville, Florida 32610-0294
(Certified Mail No. 7014 2120 0003 1051 0588)

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).