

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JESUS CAMACHO, JR. and SUSAN E.
CAMACHO, on behalf of and as
guardians of JESUS CHRISTOPHER
MICHAEL CAMACHO, a minor,

Petitioners,

vs.

Case No. 14-6136N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

EMAD ATTA, M.D., AND EMORY
MEDICAL CENTER CORPORATION,
d/b/a WOMEN'S CENTER OF FLORIDA,

Intervenors.

_____ /

SUMMARY FINAL ORDER

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 May 28, 2015.

STATEMENT OF THE CASE

On December 29, 2014, Petitioners, Jesus Camacho, Jr., and Susan E. Camacho, on behalf of and as guardians of Jesus Christopher Michael Camacho (Jesus), 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 Emad Ismael Atta, M.D., as the physician providing obstetrical services at the birth of Jesus on November 29, 2011, at Shands Lake Shore Regional Medical Center located in Lake City, Florida.

DOAH served NICA with a copy of the Petition on January 2, 2015. DOAH served Emad Ismael Atta, M.D., and Shands Lake Shore Regional Medical Center on January 2, 2015.

On January 16, 2015, Emad Atta, M.D., and Emory Medical Corporation, d/b/a Women's Center of Florida, filed a Petition to Intervene, which was heard by telephonic motion hearing on February 3, 2015. The Petition to Intervene was granted by Order dated February 4, 2015. As of the date of this Summary Final Order, Shands Lake Shore Regional Medical Center has not petitioned to intervene in this proceeding.

On May 28, 2015, NICA filed a Motion for Summary Final Order, asserting that Jesus did sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. NICA represented in its Motion that Petitioners and Intervenors agreed that Jesus' claim is compensable under the Plan. On June 1, 2015, Petitioners filed a

Response to the Motion for Summary Final Order stating that they agree and stipulate that the injury in this case is compensable under the Plan and that a Summary Final Order so finding should be entered.

FINDINGS OF FACT

1. Jesus Christopher Michael Camacho was born on November 29, 2011, at Shands Lake Shore Regional Medical Center located in Lake City, Florida. Jesus 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 Jesus. In a medical report dated April 8, 2015, Dr. Willis described his findings as follows:

In summary, this baby had a birth related brain injury as documented by MRI findings of extensive brain hemorrhage by DOL 2. The oxygen deprivation and brain injury was a result of poor perfusion due to blood loss in a subgaleal hematoma that occurred at delivery.

The FHR tracing during labor was not available for review, but attempt at vacuum delivery and Cesarean section were done for non-reassuring FHR pattern. It does not appear that brain injury occurred during labor or delivery, but the difficult delivery may have contributed to the eventual outcome.

The oxygen deprivation and brain injury occurred during resuscitation in the immediate post-delivery period. The baby never stabilized immediately after delivery and required continuous resuscitation,

including oxygen, intravenous fluid boluses and blood transfusions during the first day of life. The immediate post-delivery period would extend during this period of time, prior to stabilization.

There was an apparent subgaleal hematoma that began at delivery and resulted in blood loss, poor perfusion, oxygen deprivation and brain injury that occurred during the immediate post-delivery period. I am not able to comment about the severity of the brain injury.

3. NICA retained Raymond J. Fernandez, M.D.

(Dr. Fernandez), a pediatric neurologist, to examine Jesus and to review his medical records. Dr. Fernandez examined Jesus on April 8, 2015. In a medical report dated April 14, 2015, Dr. Fernandez opined as follows:

IMPRESSION:

There is clear evidence for substantial mental and motor impairment that will be permanent due to mechanical and hypoxic-ischemic brain injury sustained during labor and delivery. Jesus' brain injury is due, in large part, to his mechanically traumatic delivery that resulted in extensive brain hemorrhage. There was a lesser degree of brain injury due to oxygen deprivation as evidenced by a metabolic acidosis at birth and brain MRI abnormalities indicative of hypoxic-ischemic injury.

Jesus has a spastic right hemiplegia causing substantial motor impairment. In addition, he has expressive speech, receptive language, executive function, and learning impairments that are substantial.

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 subgaleal hematoma that began at delivery and resulted in blood loss, poor perfusion, oxygen deprivation and brain injury that occurred during the immediate post-delivery period. Dr. Willis' opinion is credited. There are no opinions filed that are contrary to Dr. Fernandez's opinion that there is clear evidence that Jesus sustained substantial mental and motor impairment that will be permanent due to mechanical and hypoxic-ischemic brain injury sustained during labor and delivery. Dr. Fernandez'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.

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 Jesus did sustain an injury to the brain caused by oxygen deprivation that occurred in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital which rendered him permanently and substantially mentally and physically impaired. Therefore, Jesus 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 unopposed Motion for Summary Final Order is granted, and Jesus Christopher Michael Camacho sustained a birth-related neurological injury which is compensable under the Plan.

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

3. It is further ORDERED that the parties are accorded 30 days from the date of this Order to resolve, subject to approval of the administrative law judge, the amount and manner of payment of an award to Petitioners; the reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees and costs; and the amount owing for expenses previously incurred. If not resolved within such period, the parties shall so advise the administrative law judge, and a hearing will be scheduled to resolve such issues. Once resolved, an award will be made consistent with section 766.31.

DONE AND ORDERED this 4th 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 4th day of June, 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 0003 1052 8125)

Stephen A. Smith, Esquire
Stephen A. Smith, P.A.
Post Office Box 1792
Lake City, Florida 32056-1792
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8132)

Clemente J. Inclan, Esquire
Saalfeld, Shad, Stokes, Inclan,
Stoudemire and Stone, P.A.
245 Riverside Avenue, Suite 400
Jacksonville, Florida 32202
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8149)

James Brent Allen, Esquire
Saalfeld, Shad, Jay, Stokes, and Inclan
50 North Laura Street, Suite 2950
Jacksonville, Florida 32202
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8156)

M. Mark Bajalia, Esquire
Bajalia Law
11512 Lake Mead Avenue, Suite 301
Jacksonville, Florida 32256
(eServed)
(Certified Mail No. 7014 2120 0003 1052 8163)

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 8170)

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 8187)

Shands Lake Shore Regional Medical Center
Attention: Risk Management
368 Northeast Franklin Street
Lake City, Florida 32055
(Certified Mail No. 7014 2120 0003 1052 8194)

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).