

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BRITTANY ISOM, on behalf of and  
as parent and natural guardian  
of MALIYAH JONES, a minor,

Petitioner,

vs.

Case No. 15-1869N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION (NICA),

Respondent,

and

RONNIE JO STRINGER, ARNP, CNM;  
NORTH FLORIDA WOMAN CARE, LLC,  
d/b/a GAINESVILLE OB/GYN; AND  
NORTH FLORIDA REGIONAL MEDICAL  
CENTER,

Intervenors.

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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 December 10, 2015.

STATEMENT OF THE CASE

On April 6, 2015, Petitioner, Brittany Isom, on behalf of and as parent and natural guardian of Maliyah Jones (Maliyah), a minor, filed an Amended 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 Ronnie Jo Stringer, ARNP, CNM, and Gainesville OB/GYN, as the medical providers who provided obstetrical services at the birth of Maliyah on May 28, 2013, at North Florida Regional Medical Center located in Gainesville, Florida.

DOAH served NICA with a copy of the Petition on April 8, 2015. DOAH served Ronnie Jo Stringer, ARNP, CNM, and Gainesville OB/GYN with a copy of the Petition on April 9, 2015. On April 13, 2015, DOAH received a return receipt from the United States Postal Service showing that North Florida Regional Medical Center had been served with a copy of the Petition.

On June 2, 2015, Ronnie Jo Stringer, ARNP, CNM, and North Florida Woman Care, LLC, d/b/a Gainesville OB/GYN, filed a Petition for Leave to Intervene, which was granted by Order dated June 9, 2015. On July 2, 2015, North Florida Regional Medical Center filed a Petition to Intervene which was granted by Order dated July 10, 2015.

On December 10, 2015, NICA filed a Motion for Summary Final Order, asserting that Maliyah did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. As of the date of this Summary

Final Order of Dismissal, no response has been filed to the Motion for Summary Final Order.

FINDINGS OF FACT

1. Maliyah Jones was born on May 28, 2013, at North Florida Regional Medical Center located in Gainesville, Florida. Maliyah weighed 3,870 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Maliyah. In a medical report dated September 15, 2015, Dr. Willis opined as follows:

In summary, delivery was complicated by a shoulder dystocia, which resulted in an Erb's palsy. Although depressed at birth, the baby had a good response to resuscitation (bag and mask ventilation) with an Apgar score of 9 at five minutes. The baby's condition was stated to be stable on admission to the NICU. The newborn hospital course was complicated only by the Erb's palsy. Discharge was on DOL 2.

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.

3. NICA retained Laufey Y. Sigurdardottir, M.D. (Dr. Sigurdardottir), a pediatric neurologist, to examine Maliyah and to review her medical records. Dr. Sigurdardottir examined Maliyah on October 28, 2015. In a medical report regarding her independent medical examination of Maliyah, Dr. Sigurdardottir opined as follows:

Summary: Maliyah is a 2-1/2 year-old born at term after an uncomplicated pregnancy with shoulder dystocia resulting in a near complete Erb's palsy. She has required 2 surgical procedures and does have significant disability as per the Mallet scale and is likely to need more surgical procedures to enhance her functional abilities in her right upper extremity. She is, however, functioning well from a cognitive level and her gross motor skills are otherwise intact.

In review of the medical records available, it seems clear that her right brachial plexopathy did occur at birth due to mechanical injury. In light of her favorable cognitive and language development our findings are the following:

Result as to question 1: The patient is found to have a permanent physical impairment, but to have none or mild delays in language development. She is therefore not found to have a substantial mental and physical impairment at this time.

\* \* \*

In light of the above-mentioned details, Maliyah's restricted motor disability and near normal cognitive development, I do not recommend Maliyah to be included into the Neurologic Injury Compensation Association Program and would be happy to answer additional questions or review further medical records. In light of her favorable mental and developmental state it is doubtful that additional records would alter the outcome of our review. She is not felt to have a substantial mental impairment at this time.

4. 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 or spinal cord during labor, delivery or the immediate post-delivery period. Dr. Willis' opinion is credited. There are no contrary expert opinions filed that are contrary to Dr. Sigurdardottir's opinion that Maliyah is not found to have a substantial mental impairment at this time. Dr. Sigurdardottir'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 Maliyah did not sustain an injury to the brain or spinal cord caused by oxygen deprivation or mechanical injury in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital which rendered her permanently and substantially mentally and physically impaired. Therefore, Maliyah 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 Amended Petition filed by Brittany Isom, on behalf of Maliyah Jones, is dismissed with prejudice.

DONE AND ORDERED this 4th day of January, 2016, 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  
Division of Administrative Hearings  
this 4th day of January, 2016.

COPIES FURNISHED:  
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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).