

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

COURTNEY LINDSEY, individually  
and as parent of KAMARI JACKSON,  
a minor,

Petitioner,

vs.

Case No. 15-2499N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent,

and

PUTNAM COMMUNITY MEDICAL CENTER,  
LLC, d/b/a PUTNAM COMMUNITY  
MEDICAL CENTER, AND MOHAMED  
AKHIYAT, M.D.,

Intervenors.

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PARTIAL SUMMARY FINAL ORDER

This cause came on for consideration upon Respondent's Motion for Summary Final Order filed on January 28, 2016, by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA).

STATEMENT OF THE CASE

On April 29, 2015, Petitioner, Courtney Lindsey, individually and as parent of Kamari Jackson (Kamari), a minor, filed a Petition for Determination of Compensability Pursuant to

Florida Statute 766.305 (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 Mohamed M. Akhiyat, M.D., as the physician who provided obstetric services at the birth of Kamari on August 28, 2014, at Putnam Community Medical Center in Palatka, Florida.

DOAH served NICA with a copy of the Petition on May 6, 2015. DOAH served Putnam Community Medical Center with a copy of the Petition on May 7, 2015. On May 29, 2015, DOAH received a return receipt from the United States Postal Service showing that Dr. Akhiyat had been served with a copy of the Petition.

On May 26, 2015, Putnam Community Medical Center filed a Petition to Intervene, which was granted by Order dated June 3, 2015. On November 18, 2015, Dr. Akhiyat filed a Petition to Intervene, which was granted by Order dated November 30, 2015.

On January 28, 2016, NICA filed a Motion for Summary Final Order, or in the Alternative, Motion for Partial Summary Final Order. The Motion for Summary Final Order addresses the issues of birth-related neurological injury and notice, and the Alternative Motion for Partial Summary Final Order addresses the issue of birth-related neurological injury only. On February 2, 2016, Petitioner filed an Interim Response to Motion for Summary Final Order and Alternative Motion for Extension of Time to

Respond. On February 22, 2016, Putnam Community Medical Center filed a Motion for Partial Summary Final Order on the issue of notice. Petitioner was granted an extension of time to respond to the issue of notice raised by both Respondent and Intervenor Putnam Community Medical Center's motions. Intervenors do not object to NICA's motion. Petitioner no longer contests NICA's motion on the issue of compensability.

#### FINDINGS OF FACT

1. Kamari Jackson was born on August 28, 2014, at Putnam Community Medical Center in Palatka, Florida. Kamari weighed in excess of 2,500 grams at birth. Kamari was delivered by Mohamed M. Akhiyat, M.D., who was a NICA participating physician at the time of her 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 Kamari and her mother. In a medical report dated July 21, 2015, Dr. Willis summarized his findings as follows:

In summary, pregnancy was complicated by fetal growth delay and prolonged rupture of the membranes. Chorioamnionitis was suspected during labor. An abnormal FHR pattern was present during labor. The baby had thick meconium and was significantly depressed at birth. Resuscitation required intubation and chest compressions. The newborn hospital course was complicated with multi-system organ failure. MRI was consistent with diffuse global HIE. The baby

had growth delay, possible chorioamnionitis during labor and meconium aspiration syndrome, all of which likely contributed to the outcome.

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 brain injury. I am not able to comment about the severity of the brain injury.

3. NICA retained Laufey Y. Sigurdardottir, M.D.

(Dr. Sigurdardottir), as its expert in pediatric neurology who evaluated the medical records and examined Kamari on September 9, 2015. Based on her examination, Dr. Sigurdardottir made the following findings:

Impression: Upon review of the medical records, getting a detailed history from Kamari's mother and maternal grandmother and doing an independent examination of the child at the age of 12 months, it seems obvious that Kamari has a profound neurologic disability after suffering a severe hypoxic ischemic injury at birth. She currently functions at an infantile level with no volitional interaction with her environment and all hallmarks of severe spastic quadriplegia, cortical visual impairment and profound cognitive limitations. On review of gynecologic and obstetric records, the pregnancy was uncomplicated until initiation of labor after which fetal distress was noted on fetal heart rate monitoring and evident with poor Apgar scores at birth.

Result as to Question 1: The child is [sic] was found to have a permanent profound physical and mental impairment.

Result as to Question 2: After review of this case, there is evidence supporting Kamari's current devastation to be consistent with a birth-related hypoxic neurologic injury. There is no evidence to suggest otherwise.

\* \* \*

In light of the above-mentioned details and overall impression, I am recommending Kamari to be included into the Neurologic Injury Compensation Association (NICA) Program and would be happy to answer additional questions.

4. The opinions of Dr. Willis and Dr. Sigurdardottir are credited. Based on their opinions, Kamari sustained an injury to her brain during labor, delivery, and continuing into the immediate post-delivery period due to oxygen deprivation, which resulted in brain injury rendering Kamari permanently and substantially mentally and physically impaired.

#### 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. In determining the issue of compensability, 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.

9. 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.

10. The evidence, which is not refuted, established that Kamari 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 4th day of March, 2016, 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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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).