

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM F. ARBULU and KATHERINE
C. ROMAN, individually and on
behalf of KATHAILEEN F. ARBULU,
a minor,

Petitioners,

vs.

Case No. 15-2500N

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

Respondent,

and

OSCEOLA REGIONAL MEDICAL CENTER,

Intervenor.

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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 July 22, 2016.

STATEMENT OF THE CASE

On April 29, 2015, Petitioners, William F. Arbulu and Katherine C. Roman, individually and on behalf of Kathaileen F. Arbulu (Kathaileen), 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 Bhupendrakumar M. Patel, M.D., as the physician who provided obstetric services for the birth of Kathaileen on April 27, 2013, at Osceola Regional Medical Center in Kissimmee, Florida.

DOAH served NICA with the Petition on May 6, 2015. DOAH served Osceola Regional Medical Center a copy of the Petition on May 8, 2015. DOAH mailed a copy of the Petition to Bhupendrakumar M. Patel, M.D., on May 5, 2015. The envelope was returned to DOAH on June 16, 2015, marked "Return to Sender, Unable to Forward." DOAH verified Dr. Patel's address on the Department of Health's website and again mailed a copy of the Petition to Dr. Patel on June 24, 2015. As of the date of this Summary Final Order of Dismissal, Dr. Patel has not petitioned to intervene into this proceeding.

On August 6, 2015, Osceola Regional Medical Center filed a Petition to Intervene, which was granted by Order dated August 17, 2015.

On July 22, 2016, NICA filed a Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim was not compensable because Kathaileen did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. The Motion

stated that Intervenor takes no position on the Motion.
Petitioners did not file a response to the Motion.

On August 4, 2016, an Order to Show Cause was entered which allowed Petitioners until August 19, 2016, to inform the undersigned in writing as to why the motion should not be granted and a summary final order be entered finding Petitioners' claim is not compensable. To date, no response has been filed by Petitioners to the Motion.

FINDINGS OF FACT

1. Kathaileen F. Arbulu was born on April 27, 2013, at Osceola Regional Medical Center in Kissimmee, Florida.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Kathaileen. In a report dated March 9, 2016, Dr. Willis described his findings in pertinent part as follows:

The mother was admitted to the hospital at 38 weeks for induction of labor due to preeclampsia and a history of Gestational Diabetes. Fetal heart rate (FHR) monitor tracing during labor did not suggest fetal distress. Seizure activity occurred during the induction. Eclampsia was diagnosed and intravenous MgSO₄ started for management.

Cesarean section was done due to Eclampsia. The delivery was stated to be uncomplicated. Amniotic fluid was clear. There was a loose nuchal cord. Birth weight was 4,210 grams or 9 lbs 4 oz's.

The baby was not depressed. Apgar scores were 8/8. The infant cried spontaneously at delivery. No resuscitation was required. The baby was given blow-by oxygen for two-minutes and then transferred to the nursery.

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. A review of the file reveals that no contrary evidence was presented to dispute Dr. Willis' finding that Kathaileen's injuries were not the result of oxygen deprivation or mechanical injury during labor, delivery, or the immediate post-delivery period. Dr. Willis' opinion is credited.

CONCLUSIONS OF LAW

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

5. 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.

6. 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.

7. NICA has determined that Petitioners do not have a claim that is compensable under the Plan and has filed a Motion for Summary Final Order, requesting that an order be entered finding that the claim is not compensable.

8. In ruling on the motion, 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).

§ 766.309(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 there was not an obstetrical event that resulted in loss of oxygen or mechanical trauma to Kathaileen's brain during labor, delivery or the immediate post-delivery period. Thus, Kathaileen 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 Petition filed by William F. Arbulu and Katherine C. Roman, individually and on behalf of Kathaileen F. Arbulu, a minor, is dismissed with prejudice.

DONE AND ORDERED this 24th day of August, 2016, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of August, 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).