

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KANISHA WILLIAMS, individually
and VICTORYIA WILLIAMS, minor,

Petitioners,

vs.

Case No. 15-3296N

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

Respondent.

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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 21, 2015.

STATEMENT OF THE CASE

On June 3, 2015, Petitioners, Kanisha Williams, individually and Victoryia Williams (Victoryia), 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 Ramon Hechavarria, M.D., as the physician providing obstetrical services at the birth of Victoryia on

May 3, 2012, at North Shore Medical Center located in Miami, Florida.

DOAH served NICA with a copy of the Petition on June 15, 2015. On June 24, 2015, DOAH received return receipts from the United States Postal Service showing that Dr. Hechavarria and North Shore Medical Center had been served with a copy of the Petition.

As of the date of this Summary Final Order of Dismissal, neither Ramon Hechavarria, M.D., nor North Shore Medical Center has petitioned to intervene in this proceeding.

On July 21, 2015, NICA filed a Motion for Summary Final Order, asserting that Victoryia did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. It is noted that the Petition was filed under protest and that Petitioners assert that they are not claimants. Referencing the Petition and the affidavit attached to the Motion for Summary Final Order, NICA asserts that there are no genuine issues of material fact regarding the compensability of this claim.

No objection has been filed to the Motion. On July 30, 2015, NICA filed a Response to Order of July 20, 2015, advising that Petitioners and Respondent agree that no hearing is necessary.

FINDINGS OF FACT

1. Victoryia Williams was born on May 3, 2012, at North Shore Medical Center located in Miami, Florida.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Victoryia. In a report dated July 15, 2015, Dr. Willis described his findings in pertinent part as follows:

Delivery was by spontaneous vaginal birth. Birth weight was 3,740 grams or 8 lbs 4 oz's. Amniotic fluid was clear. The baby was not depressed at birth. Apgar scores were 9/9.

The baby had a normal newborn hospital course. Admission physical exam in the nursery diagnosed "term newborn female." Transition was stated to be "unremarkable." The baby was out of the nursery and with the mother about 5 hours after birth.

Records after hospital discharge indicate the child developed seizures at about 5 months of age. Genetic evaluation was done at about 14 months due to seizures and no genetic abnormalities were found. The baby was not dysmorphic. MRI at this time showed volume loss.

In summary, prenatal course was uncomplicated. Labor was induced at 39 weeks. There was no fetal distress during labor. A variable FHR pattern developed just prior to delivery and would be considered fairly normal second stage of labor FHR pattern. This period of variable decelerations did not result in oxygen deprivation to the baby. The baby was delivered by spontaneous vaginal delivery and was not depressed at birth. The newborn hospital course was uncomplicated.

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. In an affidavit dated July 17, 2015, Dr. Willis confirmed his opinion as stated in his medical report and opined as follows:

5. It is my opinion that the prenatal course was uncomplicated. Labor was induced at 39 weeks. There was no fetal distress during labor. A variable FHR pattern developed just prior to delivery and would be considered fairly normal second stage of labor FHR pattern. This period of variable decelerations did not result in oxygen deprivation to the baby. The baby was delivered by spontaneous vaginal delivery and was not depressed at birth. The newborn hospital course was uncomplicated.

6. As such, it is my opinion that 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.

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 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. Dr. Willis' 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 Victoryia did not sustain an injury to the brain caused by oxygen deprivation or mechanical injury in the course of labor, delivery or the immediate post-delivery period. Therefore, Victoryia 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 Kanisha Williams, individually and Victoryia Williams, a minor, is dismissed with prejudice.

DONE AND ORDERED this 24th day of August, 2015, in
Tallahassee, Leon County, Florida.



BARBARA J. STAROS
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Filed with the Clerk of the
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this 24th day of August, 2015.

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).