

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LATOYA JOHNSON, on behalf of and  
as parent and natural guardian  
of RHY'LEE WILSON, a minor,

Petitioner,

vs.

Case No. 16-3532N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent,

and

ORLANDO HEALTH, INC., d/b/a  
WINNIE PALMER HOSPITAL FOR WOMEN  
& BABIES, AND RONALD EASON,  
M.D.,

Intervenors.

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PARTIAL SUMMARY FINAL ORDER

This cause came on for consideration upon a Renewed Motion for Summary Final Order filed on June 15, 2017, by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA).

STATEMENT OF THE CASE

On May 27, 2016, Petitioner, Latoya Johnson, on behalf of and as parent and natural guardian of Rhy'lee Wilson (Rhy'lee), 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 Ronald Eason, M.D. (Dr. Eason), as the physician who provided obstetric services at the birth of Rhy'lee on August 5, 2014, at Orlando Health, Inc., d/b/a Winnie Palmer Hospital for Women and Babies (Winnie Palmer Hospital), in Orlando, Florida.

Among the allegations contained in the Petition were that:

Rhy'lee Wilson suffered brain damage as a result of a birth related neurological injury. (Petition, para. 4);

It is alleged that Rhy'lee Wilson suffered brain damage as a result of a difficult birth. (Petition, para. 7)

On June 22, 2016, DOAH served NICA, Winnie Palmer Hospital, and Dr. Eason with a copy of the Petition. On June 23, 2016, DOAH received a return receipt from NICA showing that it had been served with a copy of the Petition. On July 7, 2016, DOAH received a return receipt from Winnie Palmer Hospital showing that it had been served with a copy of the Petition. On July 28, 2016, DOAH received a return receipt from Dr. Eason showing that he had been served with a copy of the Petition.

On July 29, 2016, Winnie Palmer Hospital and Dr. Eason filed a Petition to Intervene, which was granted by Order dated August 11, 2016.

On January 6, 2017, NICA filed a notice of Service of Expert Interrogatories to Petitioner. Petitioner failed to timely respond to said Expert Interrogatories.

On March 8, 2017, NICA filed a Motion for Summary Final Order. The Motion for Summary Final Order addresses the issue of compensability. On March 16, 2017, Judge Barbara Staros ordered that NICA's Motion for Summary Final Order is premature and reserved ruling on the motion.

Additionally, on March 16, Judge Staros Ordered that:

[N]o later than May 1, 2017, Petitioner shall indicate whether or not she will be challenging the issue of compensability at final hearing, and, if so, shall disclose the name(s) and business address(s) of any expert whose testimony and opinion she intends to rely on at hearing. If Petitioner discloses expert witnesses, answers to NICA's expert interrogatories shall be served no later than 10 days following such disclosure.

On March 17, 2017, Petitioner's Answers to NICA's Expert Interrogatories were served to NICA. However, the Answers did not identify any experts retained by Petitioner. Instead, Petitioner stated that the experts were undetermined. Petitioner failed to disclose any expert witnesses (or request an extension) by May 1, 2017, thus violating the March 16th Order.

Petitioner did not timely respond to Respondent's Motion for Summary Final Order, filed on June 15, 2017.

FINDINGS OF FACT

1. Rhy'lee Wilson was born on August 5, 2014, at Winnie Palmer Hospital. Rhy'lee weighed in excess of 2,500 grams at birth. Rhy'lee was delivered by Dr. Eason, who was a Plan-participating physician at the time of Rhy'lee's 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 Rhy'lee and her mother. In a medical report dated December 2, 2016, Dr. Willis summarized his findings as follows:

The child suffered a brain injury due to oxygen deprivation as a result of placental abruption. However, mother was not in labor, so the injury did not occur during labor. Oxygen deprivation and brain injury occurred prior to labor. There may have been some ongoing injury during the actual delivery and continuing into the immediate postdelivery period.

3. NICA retained Laufey Y. Sigurdardottir, M.D. (Dr. Sigurdardottir), as its expert in pediatric neurology who evaluated the medical records and Rhy'lee on August 24, 2016. Based on her examination, Dr. Sigurdardottir made the following findings:

The patient is found to have a substantial physical and mental impairment at this time. . . . Rhy'lee's injury is a neurologic injury to the brain due to oxygen deprivation and it is felt to be birth related. . . . Rhy'lee's prognosis for full recovery is extremely poor and her life expectancy is

extremely foreshortened, mainly resulting from her inability to handle her secretions.

In light of the above-mentioned details, although there seems clear evidence that Rhy'lee's current condition is secondary to birth-related uterine torsion and resulting hypoxic ischemic event, I recommend fully that Rhy'lee be included into the Neurologic Injury Compensation Association Program. . . .

4. The opinions of Dr. Willis and Dr. Sigurdardottir are credited. Based on their opinions, Rhy'lee sustained an injury to her brain during labor, delivery, and continuing into the immediate postdelivery period due to oxygen deprivation, which resulted in brain injury rendering Rhy'lee 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, establishes that Rhy'lee sustained a birth-related neurological injury and is eligible for benefits under the Plan with regards to compensability. This conclusion is consistent with allegations in the Petition that Rhy'lee suffered a compensable birth-related neurological injury.

#### CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED:

1. Respondent's Renewed Motion for Summary Final Order on the issue of birth-related neurological injury is partially

granted, and Petitioner's claim is found and determined to be compensable.

2. Jurisdiction is reserved to determine whether the notice requirements of section 766.316 were satisfied. A hearing on the issue of notice is currently scheduled on October 10, 2017.

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

DONE AND ORDERED this 30th day of June, 2017, in Tallahassee, Leon County, Florida.



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W. DAVID WATKINS  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of June, 2017.

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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).