

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ALYSSA YORK, a minor child, by
and through her next friends,
natural guardians and natural
parent, JOSINDA YORK; JOSINDA
YORK, individually and as mother
of ALYSSA YORK,

Petitioner,

vs.

Case No. 16-5172N

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

Respondent.

_____ /

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon an Unopposed Motion for Summary Final Order filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), on February 13, 2017.

STATEMENT OF THE CASE

On September 1, 2016, Petitioner, Josinda York, individually and on behalf of and as mother of Alyssa York (Alyssa), 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 Emily Balanky, M.D., as the physician who provided obstetrical services at the birth of Alyssa on June 11, 2014, at Baptist Medical Center South located in Jacksonville, Florida.

DOAH served NICA with a copy of the Petition on September 14, 2016. DOAH served Emily Balanky, M.D., with a copy of the Petition on September 15, 2016. On September 19, 2016, DOAH received a return receipt from the United States Postal Service showing that Baptist Medical Center South had been served with a copy of the Petition.

On December 19, 2016, NICA filed a Response to Petition for Benefits, asserting that Alyssa did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. On February 13, 2017, NICA filed an Unopposed Motion for Summary Final Order, representing that Petitioner has no objection to the granting of this Motion.

As of the date of this Summary Final Order of Dismissal, neither Dr. Balanky nor Baptist Medical Center South has petitioned to intervene in this proceeding.

FINDINGS OF FACT

1. Alyssa York was born on June 11, 2014, at Baptist Medical Center South located in Jacksonville, Florida. Alyssa weighed 4,026 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Alyssa. In a medical report dated December 8, 2016, Dr. Willis opined as follows:

In summary, delivery was complicated by a shoulder dystocia. The newborn was not depressed with a 5 minute Apgar score of 8. Resuscitation after delivery required only tactile stimulation and blow-by oxygen. The baby had an Erb's palsy, but otherwise an uncomplicated newborn hospital course.

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.

3. NICA retained Laufey Y. Sigurdardottir, M.D. (Dr. Sigurdardottir), a pediatric neurologist, to examine Alyssa and to review her medical records. Dr. Sigurdardottir examined Alyssa on December 2, 2016. In a medical report regarding her independent medical examination of Alyssa, Dr. Sigurdardottir opined as follows:

Summary: Alyssa is a 2-1/2 year-old who suffered a brachial plexus injury during a vaginal delivery complicated by a 1 minute shoulder dystocia. At the current age of 2 years 5 months she has a functional deficit that seems relatively mild and has not needed surgical intervention at this time. Her cognition, mental abilities seem age appropriate. In light of the above, my results are the following:

Result as to question 1: Alyssa is found to have a mild physical impairment, but no noted mental impairment at this time.

Result as to question 2: The brachial plexopathy is most likely due to injury sustained during the birthing process.

Results as to question 3: The prognosis for full recovery is regarded [sic] as she continues to have functional limitations in her right arm. She however has normal abilities in other areas and her cognition is completely normal.

In light of this, I do not recommend Alyssa to be included in the NICA program. I will be happy to answer additional questions.

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 Alyssa has a mild physical impairment but is not found to have a 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 Alyssa 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, Alyssa 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 Josinda York, individually and as mother of Alyssa York, is dismissed with prejudice.

DONE AND ORDERED this 21st day of February, 2017, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of February, 2017.

COPIES FURNISHED:
(via certified mail)

Kenney Shipley, Executive Director
Florida Birth Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail No. 7014 2120 0003 1053 2252)

David Ryan Best, Esquire
Best Law Firm Florida, P.A.
Post Office Box 3306
Orlando, Florida 32802
(eServed)
(Certified Mail No. 7014 2120 0003 1053 2269)

Brooke M. Gaffney, Esquire
Smith Bigman Brock
444 Seabreeze Boulevard
Daytona Beach, Florida 32118
(eServed)
(Certified Mail No. 7014 2120 0003 1053 2276)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7014 2120 0003 1053 2283)

Justin Senior, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail No. 7014 2120 0003 1053 2290)

Baptist South Medical Center
Attention: Risk Management
14550 Old St. Augustine Road
Jacksonville, Florida 32258
(Certified Mail No. 7014 2120 0003 1053 2306)

Emily Balanky, M.D.
Suite 311
14546 Old St. Augustine Road
Jacksonville, Florida 32258
(Certified Mail No. 7014 2120 0003 1053 2313)

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).