

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MEGAN MUELLER AND COREY MUELLER,
on behalf of and as parents and
natural guardians of LUCAS
MUELLER, a minor,

Petitioners,

vs.

Case No. 16-5497N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

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 November 1, 2016.

STATEMENT OF THE CASE

On September 14, 2016, Petitioners, Megan Mueller and Corey Mueller, on behalf of and as parents and natural guardians of Lucas Mueller (Lucas), 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

Jorge Alvarez-Hernandez, M.D., as the physician who provided obstetric services for the birth of Lucas on September 21, 2014, at Lakewood Ranch Medical Center in Lakewood Ranch, Florida.

DOAH served NICA with a copy of the Petition on September 23, 2016. DOAH served Lakewood Ranch Medical Center with a copy of the Petition on September 24, 2016. DOAH served Jorge Alvarez-Hernandez, M.D., a copy of the Petition on September 27, 2016. As of the date of this Summary Final Order of Dismissal, neither Dr. Alvarez-Hernandez nor Lakewood Ranch Medical Center has petitioned to intervene into this proceeding.

On November 1, 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 Lucas did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes. Petitioners did not file a response to the Motion.

On November 16, 2016, an Order to Show Cause was entered which allowed Petitioners until December 1, 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 or to the Order to Show Cause.

FINDINGS OF FACT

1. Lucas Mueller was born on September 21, 2014, at Lakewood Ranch Medical Center in Lakewood Ranch, Florida.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Lucas. In a report dated October 24, 2016, Dr. Willis described his findings in pertinent part as follows:

The fetal heart rate (FHR) monitor tracing during labor was reviewed and did not suggest fetal distress. Delivery was by vacuum assisted vaginal birth. Vacuum assistance was done for maternal exhaustion. Birth weight was 7 lbs 7 oz's.

The baby was not depressed at birth. Apgar scores were 7/9. The newborn hospital course was benign.

"Well visits" with Pediatrics after birth at one to four months of age indicated no problems. The baby was evaluated at 5 months of age for "head drooping." Developmental delays were noted by 7 months of age. Seizure activity was identified by EEG at 11 months of age.

MRI of the cervical spine was negative. MRI of the brain at about one year of age was essentially negative. Genetic evaluation with microarray did not identify any genetic disorders.

In summary, the child was not depressed at birth and apparently no problems were noted until about 5 months of age. MRI of the brain was essentially negative.

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. Dr. Willis reaffirmed his opinion in an affidavit dated October 31, 2016.

4. A review of the file reveals that no contrary evidence was presented to dispute Dr. Willis' finding that there was no apparent obstetric event that resulted in oxygen deprivation or mechanical trauma 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. 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.

9. 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.

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 there was no apparent obstetrical event that resulted in loss of oxygen or mechanical trauma to Lucas's brain during labor, delivery or the immediate post-delivery period. Thus, Lucas 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 Megan Mueller and Corey Mueller, on behalf of and as parents and natural guardians of Lucas Mueller, a minor, is dismissed with prejudice.

DONE AND ORDERED this 8th day of December, 2016, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
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this 8th day of December, 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).