

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAYA KRISHNA SABBINENI AND
KAVITHA NAGALLA, on behalf of
and as parents and natural
guardians of SATHVIK C.
SABBINENI, a minor,

Petitioners,

vs.

Case No. 16-5888N

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 February 12, 2018.^{1/}

STATEMENT OF THE CASE

On October 5, 2016, Petitioners, Jaya Krishna Sabbineni and Kavitha Nagalla, as parents and natural guardians of Sathvik C. Sabbineni (Sathvik), 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 the determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Petition named

Jeannine V. Mauney, M.D., and Natasha Eliz, M.D., as the physicians who provided obstetric services for the birth of Sathvik on October 21, 2014, at St. Vincent's Medical Center in Jacksonville, Florida.

DOAH served NICA and St. Vincent's Medical Center with a copy of the Petition on October 17, 2016. Jeannine V. Mauney, M.D., was served with a copy of the Petition on December 2, 2016.

On February 12, 2018, NICA filed a Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim was not compensable because Sathvik did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes.

On February 20, 2018, the undersigned issued an Order to Show Cause, ordering Petitioners to show cause in writing, on or before February 27, 2018, why Respondent's motion should not be granted and an order entered determining that the instant claim is not compensable.

On February 26, 2018, Petitioners filed a motion to extend the time to respond to the Order to Show Cause to March 14, 2018. Petitioners represented that they were working with medical experts to provide a report related to the subject minor. On February 27, 2018, Respondent filed a response to Petitioners' motion and represented it had no objection to the request;

however, requested that the final hearing be continued to provide the parties sufficient time to conduct additional discovery, if necessary, based upon the anticipated expert reports to be filed by Petitioners.

On February 28, 2018, the undersigned issued an Order Granting Continuance. Said Order granted Petitioners' motion for extension of time to respond to the Order to Show Cause on or before March 14, 2018. Said Order further found good cause for continuance of the final hearing, and cancelled the final hearing previously scheduled for March 29, 2018. Petitioners did not file a response to the Order to Show Cause.

FINDINGS OF FACT

1. Sathvik was born on October 21, 2014, at St. Vincent's Medical Center in Jacksonville, Florida.

2. Donald Willis, M.D., an obstetrician specializing in maternal-fetal medicine, was requested by NICA to review the medical records of Sathvik, to opine whether an injury occurred in the course of labor, delivery or resuscitation in the immediate postdelivery period at St. Vincent's due to oxygen deprivation or mechanical injury. In a report dated November 18, 2016, Dr. Willis described his findings in pertinent part as follows:

In summary, the baby was delivered at term and was not depressed at birth. Apgar scores were 8/9. Cord blood pH was normal at 7.37.

The baby had a benign newborn hospital course and was discharged home on DOL (day of life) 2.

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. Attached to Respondent's Motion for Summary Final Order is the affidavit of Dr. Willis, dated February 6, 2018. In his affidavit, Dr. Willis affirms his November 18, 2016, report and maintains that his opinions are within a reasonable degree of medical probability.

4. NICA also retained Laufey Y. Sigurdardottir, M.D., a pediatric neurologist, to review Sathvik's medical records and conduct an Independent Medical Examination and opine as to whether he suffers from a permanent and substantial mental and physical impairment as a result of a birth-related neurological injury. Dr. Sigurdardottir reviewed the medical records, obtained a full historical account from Sathvik's parents, and performed a full neurological evaluation on January 11, 2017.

5. In a report authored after the neurologic evaluation, Dr. Sigurdardottir summarized her findings as follows:

Summary: Here we have a 2-year 3-month old, ex full-term infant, born via vaginal delivery, with a single late deceleration approximately 2 hours prior to birth. He had no signs of perinatal encephalopathy but was diagnosed with a left hemiplegic CT at 6 months of age. He was found to have

evidence, on head ultrasound, of a remote stroke. At this time, it is difficult to establish the timing of his stroke. He has a mild language delay, but no signs of a more severe global cognitive delay. His motor impairment is substantial. He is in all therapy services at this time. He does have treated epilepsy.

6. In response to whether Sathvik suffers from a permanent and substantial mental and physical impairment, Dr. Sigurdardottir opined in her report that, "Sathvik is found to have a substantial physical impairment with a left spastic hemiplegia, but a nonsubstantial cognitive impairment, with a mild expressive language delay."

7. In response to whether such an impairment is consistent with a neurologic injury to the brain or spinal cord acquired due to oxygen deprivation or mechanical injury, and, if so, whether the injury is felt to be labor and birth related, Dr. Sigurdardottir opined in her report that, "[i]n review of available documents, his injury is felt to be acquired due to oxygen deprivation of the brain, but it is unclear that this injury is birth related."

8. Finally, in response to Sathvik's prognosis and estimate of life expectancy, Dr. Sigurdardottir opined in her report that, "[t]he prognosis for full motor recovery is poor. The prognosis for mental abilities is excellent. They estimate a life expectancy is normal." Her report concluded that, "[i]n light of

his normal cognitive abilities, apart from a mild expressive language delay, and the difficulty with timing of his ischemic injury, I do not feel that Sathvik should be included in the NICA Program."

9. Respondent's Motion for Summary Final Order also relies upon the attached affidavit from Dr. Sigurdardottir, dated February 8, 2018. In her affidavit, she affirms the findings contained in her report and affirms that her opinions are within a reasonable degree of medical probability.

10. A review of the file reveals that no contrary evidence was presented to dispute the findings and opinions of Dr. Willis and Dr. Sigurdardottir. Their opinions are credited.

CONCLUSIONS OF LAW

11. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

12. 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.

13. 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.

14. NICA has determined that Petitioner does 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.

15. 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.

16. 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

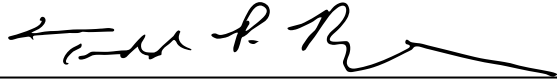
multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired.

17. The evidence fails to establish that there was an obstetrical event that resulted in loss of oxygen or mechanical trauma to Sathvik's brain or spinal cord during labor, delivery, or the immediate post-delivery period. Even if the evidence had established that Sathvik had sustained a stroke in the course of labor, delivery, or resuscitation in the immediate postdelivery period, the unrefuted evidence established that Sathvik did not sustain a permanent and substantial mental impairment. Thus, Sathvik did not sustain a birth-related neurological injury as defined in section 766.302(2), Florida Statutes, and, therefore, 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 is dismissed with prejudice.

DONE AND ORDERED this 22nd day of March, 2018, in
Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of March, 2018.

ENDNOTE

^{1/} Respondent's Motion for Summary Final Order was filed on October 30, 2017. Said motion represented that affidavits from the medical experts would be filed subsequently in support of the motion. Respondent's Notice of Filing Affidavits in support of Respondent's Motion for Summary Final Order was filed on February 12, 2018. Accordingly, the undersigned construes Respondent's Motion and supporting affidavits as filed on February 12, 2018.

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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).