

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RADIAH NIXON, individually and
as parent of CALISE L. MUNIZ, a
minor,

Petitioner,

vs.

Case No. 16-6531N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon the parties' Joint Stipulation of Non-compensability and request for an entry of a summary final order of non-compensability filed on March 2, 2017.

STATEMENT OF THE CASE

On November 3, 2016, Petitioner, Radiah Nixon, individually and as parent of Calise L. Muniz (Calise), a minor, filed a Petition for Determination of Compensability Pursuant to Florida Statute Section 766.301 et seq. 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 Matthew H. Conrad, M.D., as the physician who provided obstetric services at the birth of Calise on May 2,

2015, at Holmes Regional Medical Center located in Melbourne, Florida.

DOAH served NICA with a copy of the Petition on November 14, 2016. DOAH served Matthew H. Conrad, M.D., and Holmes Regional Medical Center with a copy of the Petition on November 16, 2016.

As of the date of this Summary Final Order of Dismissal, neither Matthew H. Conrad, M.D., nor Holmes Regional Medical Center, has petitioned to intervene into this proceeding.

On February 20, 2017, NICA filed a Response to Petition for Benefits, asserting that Calise did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes, and requested that a hearing be scheduled to determine compensability.

On March 2, 2017, the parties filed a Joint Stipulation of Non-compensability. The parties stipulated that Calise does not meet the statutory requirements for compensability and requested in the Joint Stipulation that a final summary order of non-compensability be entered.

FINDINGS OF FACT

1. Calise L. Muniz was born on May 2, 2015, at Holmes Regional Medical Center, located in Melbourne, Florida. Calise weighed in excess of 2,500 grams at birth.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Calise. In a medical report

dated January 24, 2017, Dr. Willis opined in pertinent part as follows:

In summary, the mother apparently became hypotensive after placement of epidural anesthesia with resulting fetal distress. The baby was depressed at birth. The initial ABG was consistent with metabolic acidosis. Cooling protocol was initiated for HIE. EEG was normal for age. No MRI or CT scan was done during the newborn hospital course.

There was an apparent obstetrical event that resulted in loss of oxygen during labor and delivery. However, there was no documentation of actual brain injury.

3. NICA retained Laufey Y. Sigurdardottir, M.D.

(Dr. Sigurdardottir), a pediatric neurologist, to examine Calise and to review her medical records. Dr. Sigurdardottir examined Calise on February 1, 2017. In a medical report dated February 1, 2017, Dr. Sigurdardottir summarized her examination of Calise and opined in pertinent part as follows:

Summary: Calise is a 21-month-old female who was born via emergency cesarean section after nonreassuring fetal heart rate tracings were noted after a high spinal anesthesia. She had poor Apgars of 2, 4 and 5 after 1, 5 and 10 minutes, and was treated with cooling protocol. She did not have any neonatal seizures and the only neuroimaging available is a head ultrasound on day of life 1 that was normal. On neurologic exam today she is normal, both with her motor skills and cognition and language development. There are no signs of autistic features.

Results as to question 1: Calise is not found to have substantial physical or mental impairment at this time.

Results as to question 2: In review of available documents, she does have the clinical picture of an acute birth-related hypoxic injury.

Results as to question 3: The prognosis for full motor and mental recovery is excellent and her life expectancy is full.

In light of the normal cognitive abilities and normal neurologic exam, I do not feel that Calise should be included in the NICA program. If needed, 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 while there was an apparent obstetrical event that resulted in loss of oxygen to the baby's brain during labor and delivery, there was no documentation of actual brain injury. Dr. Willis' opinion is credited. There are no expert opinions filed that are contrary to Dr. Sigurdardottir's opinion that Calise does not have a substantial physical or mental impairment. 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 Calise 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, Calise 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 Radiah Nixon, individually and as parent of Calise L. Muniz, is dismissed with prejudice.

DONE AND ORDERED this 14th day of March, 2017, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of March, 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).