

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JEFFREY ANTUNES AND KESIA
ANTUNES, individually and as
parents of MELINA ANTUNES, a
minor,

Petitioners,

vs.

Case No. 16-6895N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

ADVENTIST HEALTH SYSTEM/SUNBELT,
INC., d/b/a FLORIDA HOSPITAL
ALTAMONTE,

Intervenor.

_____ /

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 March 16, 2017.

STATEMENT OF THE CASE

On November 16, 2016, Petitioners, Jeffrey Antunes and Kesia Antunes, individually and as parents of Melina Antunes (Melina), a minor, filed a Petition for Determination of Compensability

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 Pedro Cruz-Torres, M.D., as the physician who provided obstetric services at the birth of Melina on August 27, 2015, at Florida Hospital located in Orlando, Florida.

DOAH served NICA and Pedro Cruz-Torres, M.D., with a copy of the Petition on November 28, 2016. On November 23, 2016, Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Altamonte, filed a Petition to Intervene, which was granted.

As of the date of this Summary Final Order of Dismissal, Pedro Cruz-Torres, M.D., has not petitioned to intervene into this proceeding.

On March 1, 2017, NICA filed a Response to Petition for Benefits, asserting that Melina 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 16, 2017, the parties filed a Status Report stating that the parties were in agreement that a final hearing was not necessary. On the same day, Respondent filed an Unopposed Motion for Summary Final Order.

FINDINGS OF FACT

1. Melina Antunes was born on August 27, 2015, at Florida Hospital, located in Orlando, Florida. Melina 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 Melina. In a medical report dated December 12, 2016, Dr. Willis summarized his findings and opined in pertinent part as follows:

In summary, induction of labor was complicated by a spontaneous uterine rupture. The baby and placenta were expelled into the maternal abdomen. The baby was depressed at birth with low Apgar scores and a cord blood gas consistent with acidosis (pH 6.65). MRI was consistent with HIE.

There was an apparent obstetrical event (uterine rupture) that resulted in loss of oxygen to the baby's brain during labor, delivery, and continuing into the immediate post delivery period. The oxygen deprivation resulted in brain injury.

3. NICA retained Laufey Y. Sigurdardottir, M.D. (Dr. Sigurdardottir), a pediatric neurologist, to examine Melina and to review her medical records. Dr. Sigurdardottir examined Melina on February 15, 2017. In a medical report dated February 15, 2017, Dr. Sigurdardottir summarized her examination of Melina and opined in pertinent part as follows:

Summary: Here we have a 17-month-old born after a sudden uterine rupture during active labor. The patient had neurologic depression at birth, significant acidosis with a pH of

6.6 and required active cooling as well as supportive medication for seizures in the neonatal period. She did have well documented injury on MRI but has made a remarkable recovery. Neurologic exam today, has mild abnormalities, but no standardized developmental testing is available for our review.

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

Results as to question 2: In review of available documents, Melina does have the clinical picture of an acute birth related hypoxic injury with both the clinical features of hypoxic encephalopathy and electrographic and MRI evidence to suggest hypoxic injury.

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

In light of her normal cognitive abilities and near normal neurologic exam, I do not feel that Melina should be included in the NICA program. If needed, I will be happy to answer additional questions or review further documentation of her developmental status.

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 an apparent obstetrical event that resulted in loss of oxygen to the baby's brain during labor, delivery and the post-delivery period which resulted in brain injury. Dr. Willis' opinion is credited. There are no expert opinions filed that are contrary to Dr. Sigurdardottir's

opinion that Melina 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. To be compensable under the NICA Plan, there must have been an obstetrical event which resulted in loss of oxygen to the baby's brain during labor, delivery, or resuscitation in the immediate post-delivery period resulting in a permanent and substantial mental impairment and a permanent and substantial physical impairment, inasmuch as both are required to establish compensability. Fla. Birth-Related Neurological Injury Comp. Ass'n v. Div. of Admin. Hearings, 686 So. 2d 1349 (Fla. 1997).

12. The evidence, which is not refuted, established that Melina does not have a permanent and substantial mental or physical impairment. Therefore, Melina is not eligible for benefits under the Plan.

CONCLUSION

Based on the Findings of Fact and the Conclusions of Law, it is ORDERED that:

The Petition filed by Jeffrey Antunes and Kesia Antunes, individually and as parents of Melina Antunes, is dismissed with prejudice.

DONE AND ORDERED this 22nd day of March, 2017, 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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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).