

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARION HALEY WILSON and LEOCADIO
SANTIAGO MARTINEZ, individually
and as parents of ROSABELLA
GRACE SANTIAGO WILSON, deceased,

Petitioners,

vs.

Case No. 17-1338N

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 May 3, 2017.

STATEMENT OF THE CASE

On February 24, 2016, Petitioners, Marion Haley Wilson and Leocadio Santiago Martinez, individually and as parents of Rosabella Grace Santiago Wilson (Rosabella), deceased, filed a Petition for Determination of Compensability of Injuries 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 Ricky Phillip Leff, M.D., as the physician providing obstetrical services at the delivery of Rosabella on April 29, 2016, at Jackson Hospital (Jackson) in Marianna, Florida. Rosabella is deceased.

DOAH served NICA with a copy of the Petition on March 3, 2017. Ricky Phillip Leff, M.D., and Jackson were served with a copy of the Petition on March 7, 2017.

On April 6, 2017, Respondent filed its Response to Petition for Benefits, suggesting that the subject claim is not compensable, and requesting that a hearing be scheduled to address such issue.

On April 10, 2017, the undersigned entered an Order instructing the parties to confer and advise the undersigned in writing as to the need for a hearing, if any, and if a hearing is needed, stating when they will be prepared to proceed to hearing, the issue(s) still in dispute, their estimate of the time required for hearing, and their choice of venue.

On April 24, 2017, Respondent filed a Response to Order entered on April 10, 2017, stating that both parties agreed that a hearing would not be necessary and that this claim may be resolved by a motion for summary final order. On May 3, 2017, NICA filed a Motion for Summary Final Order, asserting that Rosabella did not sustain a "birth-related neurological injury"

as that term is defined in section 766.302(2), Florida Statutes. On that same date, Respondent filed several documents in support of its motion, including the Affidavit of Donald C. Willis, M.D., and the autopsy report for Rosabella. The motion was served by email to Petitioners on May 3, 2017. As of the close of the applicable response period, Petitioners did not file a response to the motion. Accordingly, on May 16, 2017, the undersigned entered an Order to Show Cause, giving Petitioners 10 days in which to show cause as to why the motion should not be granted. On May 26, 2017, Petitioners filed a response to the Order to Show Cause, stating that "Petitioners have no objection to the Court granting the Respondent's Motion for Summary Final Judgment."

FINDINGS OF FACT

1. On February 24, 2017, Petitioners filed a Petition for Benefits Pursuant to Florida Statute Section 766.301, et seq.

2. The child, Rosabella Wilson, was stillborn on April 29, 2016, at Gulf Coast Medical Center after the mother was transferred there from Jackson in Marianna, Florida. The circumstances of Rosabella's labor and delivery are reflected in the medical records submitted by Petitioners along with the Petition.

3. In order for a claim to be compensable under the Plan, the requisites set forth in section 766.309 must be met.

4. NICA retained Donald C. Willis, M.D. (Dr. Willis), as its medical expert specializing in maternal-fetal medicine. Upon examination of the medical records, Dr. Willis opined, in pertinent part:

Autopsy stated this was a stillbirth. Neuropathologic diagnosis was Hypoxic Ischemic Encephalopathy (HIE). No birth defects were noted.

* * *

In summary, the mother was a poorly controlled Diabetic, admitted at 38 weeks gestational age for labor induction. An abnormal FHR tracing developed during labor and resulted in fetal demise.

There was an obstetrical event that resulted in loss of oxygen to the baby's brain during labor which resulted in brain injury as diagnosed by Autopsy. Severity of the brain injury could not be determined. This was apparently not a live birth.

5. Further, in the Petition, Petitioners indicate that the child is deceased and that a birth certificate was never issued. See Petition, paras. 12 and 13. The autopsy report reviewed by Dr. Willis was included in the medical records provided by Petitioners with the Petition and indicates that the child was stillborn. Thus, the face of the Petition, the autopsy report, and Dr. Willis' affidavit establish that the child was stillborn and was not a live birth.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. The evidence, which is not refuted by any contrary expert opinions, established that Rosabella was stillborn and was not a live birth.

13. Pursuant to section 766.302(2), the definition of "birth-related neurological injury" applies to live births only. See also Univ. of Miami v. Klein, 603 So. 2d 651, 652 (Fla. 3d DCA 1992) ("Under the first clause of the above sentence it is clear that the statute does not apply unless the infant is born alive."). Thus, the instant claim does not meet the statutory criteria, as a matter of law, for compensation under the NICA Plan.

14. Therefore, Rosabella is not eligible for benefits under the Plan. §§ 766.302(2) and 766.309(1), Fla. Stat.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition filed by Petitioners, Marion Haley Wilson and Leocadio Santiago Martinez, individually and as parents of Rosabella Grace Santiago Wilson, deceased, is dismissed with prejudice.

DONE AND ORDERED this 2nd day of June, 2017, in Tallahassee, Leon County, Florida.



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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).