

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANQUAN CARTER, on behalf of and
as parent and natural guardian
of MARIAH DIXON, a minor,

Petitioner,

vs.

Case No. 17-2935N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

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 August 13, 2018.

STATEMENT OF THE CASE

On May 3, 2017, Petitioner 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 Ghulam Khan, M.D., as the physician who provided obstetric services for the birth of Mariah Dixon (Mariah) on September 13,

2013, at Baptist Medical Center South (Baptist) in Jacksonville, Florida.

DOAH served Respondent with a copy of the Petition (via certified mail) on May 24, 2017. Baptist and Dr. Khan were served with a copy of the Petition (via certified mail) on May 24, 2017, and June 11, 2017, respectively.

On November 6, 2017, Respondent filed its Response to Petition for Benefits, suggesting that the subject claim was not compensable and requesting a hearing to address said issue. On November 17, 2017, the undersigned issued an Order requiring the parties to confer and advise whether a final hearing would be required. After receiving the parties' responses, a hearing was scheduled for February 5, 2018. On January 17, 2018, Petitioner, now represented by counsel, filed a motion to continue the hearing. On January 22, 2018, the motion was granted and the hearing was rescheduled to May 8, 2018. On April 24, 2018, Petitioner filed an Unopposed Motion for Continuance of the Final Hearing. Said motion was granted.

On June 21, 2018, the parties filed a Joint Response to Order Granting Continuance, wherein the parties represented that "Petitioners have indicated that they do not intend to challenge NICA's position on compensability," and further represented that a hearing was not required. Following the undersigned's Order Requiring Response, issued August 3, 2018, Respondent filed the

instant Unopposed Motion for Summary Final Order. Said motion requests that a summary final order be entered finding that the claim is not compensable because Mariah did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes, and dismissing the Petition.

FINDINGS OF FACT

1. Mariah was born on September 13, 2013, at Baptist in Jacksonville, Florida.

2. Respondent retained Donald Willis, M.D., an obstetrician specializing in maternal-fetal medicine, to review Mariah and her mother's medical records and opine as to whether there was an injury to Mariah's brain or spinal cord that occurred in the course of labor, delivery, or resuscitation in the immediate post-delivery period due to oxygen deprivation or mechanical injury.

3. Attached to Respondent's Unopposed Motion for Summary Final Order is the affidavit of Dr. Willis, dated November 22, 2017. In his affidavit, Dr. Willis opines, to a reasonable degree of medical probability, "that there was no apparent obstetrical event that resulted in loss of oxygen or mechanical trauma to [Mariah's] brain or spinal cord occurring in the course of labor, delivery, or resuscitation in the postdelivery period."

4. Respondent also retained Laufey Y. Sigurdardottir, M.D., a pediatric neurologist, to review Mariah's medical records, conduct an Independent Medical Examination (IME), and opine as to whether she suffers from a permanent and substantial mental and physical impairment as a result of a birth-related neurological injury. Dr. Sigurdardottir reviewed the available medical records, obtained a full historical account from Mariah's parents, and conducted an IME of Mariah on September 27, 2017.

5. Dr. Sigurdardottir's IME report provides, in part, as follows:

Summary: Patient is a 4-year-old girl with history of NICU admission after birth via C section. No clear evidence of neonatal encephalopathy, normal cord blood gas and Apgars. She has congenital ocular deformity with colobomas and a global developmental delay to include autistic features. Her pattern of delays is not typical for that seen after a hypoxic ischemic injury and MRI brain was normal.

Result as to question 1: Mariah is found to have substantial delays in mental abilities but mild delays in motor abilities.

Result as to question 2: In review of available documents, her impairment is not typical of a neurologic injury to the brain or spinal cord acquired due to oxygen deprivation or mechanical injury? [sic] No clear evidence is reviewed that suggests a hypoxic ischemic even during labor or delivery.

Result as to question 3: The prognosis for full motor and mental recovery is poor and the life expectancy is normal.

In light of evidence presented I believe Mariah does not fulfill criteria of a substantial mental and physical impairment at this time. I do not feel that Mariah should be included in the NICA program. . . .

6. Respondent's Unopposed Motion for Summary Final Order also relies upon the attached affidavit of Dr. Sigurdardottir. In her affidavit, Dr. Sigurdardottir affirms the statements and opinions contained in her IME report, and opines, to a reasonable degree of medical probability, that Mariah did not suffer a birth-related neurological injury.

7. A review of the file reveals no contrary evidence was presented to refute the findings and opinions of Dr. Willis and Dr. Sigurdardottir. Their unrefuted opinions are credited.

CONCLUSIONS OF LAW

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

9. 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.

10. 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.

Respondent, 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.

11. Respondent has determined that Petitioner does not have a claim that is compensable under the Plan and has filed an Unopposed Motion for Summary Final Order, requesting that an order be entered finding that the claim is not compensable.

12. 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).

(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;

§ 766.309(1) (a), (b), Fla. Stat.

13. 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.

14. The undisputed evidence establishes that there was not an injury to Mariah's brain or spinal cord caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital. The undisputed evidence further establishes that she did not sustain a permanent and substantial physical impairment as a result thereof.

15. Having concluded this threshold issue, the undersigned need not determine whether Dr. Khan was a NICA participating physician at the time of Mariah's birth.

16. The unrefuted evidence establishes that Mariah did not sustain a birth-related neurological injury as defined in section 766.302(2), and, therefore, is not eligible for benefits under the Plan.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition is dismissed with prejudice.

DONE AND ORDERED this 16th day of August, 2018, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
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this 16th day of August, 2018.

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).