

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CATHY PIERRE AND JODENS PIERRE,  
on behalf of and as parents and  
natural guardians of JADON  
PIERRE, a minor,

Petitioners,

vs.

Case No. 17-3712N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION, a/k/a NICA,

Respondent,

and

JOY CAVALARIS, M.D.; PALM BEACH  
OBSTETRICS & GYNECOLOGY, P.A.;;  
AND GOOD SAMARITAN MEDICAL  
CENTER, INC.,

Intervenors.

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PARTIAL SUMMARY FINAL ORDER

This cause came on for consideration upon a Motion for Partial Summary Final Order filed on October 11, 2017, by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA).

STATEMENT OF THE CASE

On June 21, 2017, Petitioners, Cathy Pierre and Jodens Pierre, on behalf of and as parents and natural guardians of Jadon Pierre (Jadon), a minor, filed a Petition 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 Joy Cavalaris, M.D. (Dr. Cavalaris), as the physician who provided obstetric services at the birth of Jadon on January 26, 2015, at Good Samaritan Medical Center (Good Samaritan) in West Palm Beach, Florida.

DOAH served NICA, Good Samaritan, and Dr. Cavalaris with a copy of the Petition on July 3, 2017.

On July 13, 2017, a Motion to Intervene was filed by Dr. Cavalaris and Palm Beach Obstetrics and Gynecology, P.A. On July 25, 2017, an Order was entered granting Dr. Cavalaris's and Palm Beach Obstetrics and Gynecology's Motion to Intervene. On July 17, 2017, Good Samaritan filed a Motion to Intervene. On July 25, 2017, an Order was entered granting Good Samaritan's Motion to Intervene.

On October 11, 2017, NICA filed a Motion for Partial Summary Final Order on the issue of birth-related neurological injury. Through its motion, NICA requested the entry of a Partial Summary Final Order determining that the claim is compensable under the NICA Plan as a matter of law. On October 20, 2017, Petitioners filed an Objection to Notice of Compensability, stating that notice "was not timely provided or appropriately provided by

either the Hospital or the OB/GYN." Aside from the issue of notice, Petitioners did not contest the determination of compensability, or provide affidavits or other evidence to refute the affidavits filed by NICA.

#### FINDINGS OF FACT

1. Jadon Pierre was born on January 26, 2015, at Good Samaritan, in West Palm Beach, Florida. Jadon weighed in excess of 2,500 grams at birth. The circumstances of the labor, delivery, and birth of the minor child are reflected in the medical records of Good Samaritan submitted with the Petition.

2. In order for a claim to be compensable under the Plan, certain statutory requisites must be met. Section 766.309 provides:

(1) The Administrative Law Judge shall make the following determinations based upon all 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 § 766.302(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.

(c) How much compensation, if any, is awardable pursuant to § 766.31.

(2) If the Administrative Law Judge determines that the injury alleged is not a birth-related neurological injury or that obstetrical services were not delivered by a participating physician at birth, she or he shall enter an order . . . .

(3) The term "birth-related neurological injury" is defined in Section 766.302(2), Florida Statutes, as:

. . . 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. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality. (Emphasis added).

3. In the instant case, NICA has retained Donald Willis, M.D. (Dr. Willis) as its medical expert specializing in maternal-fetal medicine pediatric neurology. Upon examination of the pertinent medical records, Dr. Willis opined:

In summary, labor was complicated by a non-reassuring FHR pattern and a shoulder dystocia. The baby was severely depressed at birth with an Apgar scores of 0/0/0. Cord blood gas was consistent with acidosis with a pH of 6.8 and base excess of -23. Seizures began within hours of birth. The hospital course was significantly complicated by multi-system organ failures, consistent with birth related hypoxia. EEG, Head Ultrasound, CT scans and MRI were consistent with HIE.

Dr. Willis's medical Report is attached to his Affidavit. His Affidavit reflects his ultimate opinion that:

There was an obstetrical event 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.

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. The opinion of Dr. Willis that Jadon did suffer an obstetrical event that resulted in loss of oxygen to the baby's brain during delivery and continuing into the immediate post-delivery period, which resulted in brain injury, is credited.

5. In the instant case, NICA has retained Laufey Y. Sigurdardottir, M.D. (Dr. Sigurdardottir), as its medical expert in pediatric neurology. Upon examination of the child and the pertinent medical records, Dr. Sigurdardottir opined:

In summary, patient is a 2 year old boy with history of severe neurologic depression at

birth following a vaginal delivery complicated by prolonged shoulder dystocia. Patient was critically ill after birth and although he had life threatening illness with meningitis at age 6 weeks, it is my opinion that his prognosis to the meningitis was extremely poor and all evidence of substantial mental and physical impairment already present at that time.

Jadon is found to have substantial irreversible impairment in physical and mental abilities.

In review of available documents, there is evidence of impairment consistent with a neurologic injury to the brain or spinal cord acquired due to oxygen deprivation or mechanical injury.

The prognosis for full motor and mental recovery is poor and the life expectancy is likely shortened due to ongoing tracheostomy, G tube feeding and vegetative state.

Dr. Sigurdardottir's medical report is attached to her

Affidavit. Her Affidavit reflects her ultimate opinion that:

In light of evidence presented, I believe Jadon does fulfill criteria of a substantial mental and physical impairment at this time and that his injury was sustained as a hypoxic ischemic event during birth. I do feel that Jadon should be included in the NICA program.

6. 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. Sigurdardottir. The opinion of Dr. Sigurdardottir that Jadon did suffer a substantial mental

and physical impairment, due to a hypoxic ischemic event that occurred in the course of labor and delivery, is credited.

CONCLUSIONS OF LAW

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

8. 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.

9. 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.

10. If NICA determines that the injury alleged in a claim is a compensable brain-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. 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 unrebutted, established that Jadon did sustain an injury to the brain caused by oxygen deprivation occurring during the course of labor and delivery, and continuing into the immediate post-delivery period, which resulted in permanent and substantial mental and physical impairment. Thus, Jadon sustained a birth-related neurological injury and is eligible for benefits under the Plan.

#### CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED:

1. Respondent's Motion for Partial Summary Final Order on the issue of birth-related neurological injury is granted, and Petitioners' claim is found and determined to be compensable.

2. Jurisdiction is reserved to determine the issue of an award pursuant to section 766.31.

3. Jurisdiction is reserved to determine whether the notice requirements of section 766.316 were satisfied.

DONE AND ORDERED this 27th day of October, 2017, in  
Tallahassee, Leon County, Florida.



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W. DAVID WATKINS  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 27th day of October, 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).