

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GISELLE QUIROGA AND NELSON
QUIROGA, on behalf of and as
parents and natural guardians of
PAULA QUIROGA, a minor,

Petitioners,

vs.

Case No. 17-4262N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

BAPTIST HOSPITAL OF MIAMI, INC.,

Intervenor.

_____ /

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon a Motion for Partial Summary Final Order (Respondent's Motion) filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), on September 27, 2017.^{1/} On October 4, 2017, the undersigned issued an Order to Show Cause directing Petitioners and Intervenor to show cause in writing, on or before October 11, 2017, why Respondent's Motion should not be granted and a summary final order entered finding that

Petitioners' claim is not compensable. Neither Petitioners nor Intervenor responded to the Order to Show Cause.

STATEMENT OF THE CASE

On July 24, 2017, Petitioners, Gisell Quiroga and Nelson Quiroga, on behalf of and as parents and natural guardians of Paula Quiroga (Paula), a minor, filed a Petition for Benefits Pursuant to Florida Statute Section 776.301 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 Pablo Delgado, M.D., as the physician who provided obstetric services for the birth of Paula on July 27, 2012, at Baptist Hospital of Miami, Inc. (Baptist), in Miami, Florida.

DOAH served NICA with a copy of the Petition on August 2, 2017. DOAH served a copy of the Petition on Baptist on August 4, 2017, and Pablo Delgado, M.D., on August 7, 2017. On August 10, 2017, Baptist filed a Petition for Leave to Intervene, which was granted the same date.

Respondent's Motion was filed on September 27, 2017. Said motion requests that an order be entered finding that the claim was not compensable because Paula did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes.

FINDINGS OF FACT

1. Paula was born on July 27, 2012, at Baptist in Miami, Florida.

2. Donald Willis, M.D., an obstetrician specializing in maternal-fetal medicine, was retained by NICA to review the medical records of Paula, and her mother, Giselle Quiroga, to opine whether an injury occurred in the course of labor, delivery or resuscitation in the immediate postdelivery period at Baptist due to oxygen deprivation or mechanical injury. Dr. Willis reviewed the medical records and in a report dated September 29, 2017, Dr. Willis described his findings, in pertinent part, as follows:

In summary, primary Cesarean section was done for fetal macrosomia. There was no identifiable fetal distress prior to delivery. The baby was not depressed at birth with Apgar scores of 9/9. No resuscitation was required at birth. The newborn hospital course was uncomplicated. Developmental delay was suspected during childhood. MRI at about 2-years of age was consistent with brain injury. Cerebral palsy was diagnosed.

There was no obstetrical event that resulted in loss of oxygen or trauma to the baby's brain during labor, delivery and the immediate post delivery period.

3. Attached to Respondent's Motion is the affidavit of Dr. Willis, dated September 18, 2017. In his affidavit,

Dr. Willis affirms his August 29, 2017, report and maintains that there was no obstetrical event that resulted in loss of oxygen or trauma to Paula's brain during labor, delivery or the immediate postdelivery period.

4. A review of the file reveals that no contrary evidence was presented to dispute Dr. Willis' findings and opinions. Dr. Willis' opinion is credited.

CONCLUSIONS OF LAW

5. DOAH 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. NICA has determined that Petitioners do not have a claim that is compensable under the Plan and Respondent's Motion requests an order be entered finding that the claim is not compensable.

9. 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).

§ 766.309(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. Respondent's Motion, which is not refuted, establishes that Paula did not sustain an injury to the brain caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital. No evidence has been presented that Paula otherwise sustained a birth-related neurological injury. Accordingly, Paula 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 is dismissed with prejudice.

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



TODD P. RESAVAGE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of October, 2017.

ENDNOTE

^{1/} Notwithstanding the title of the filing, the undersigned construes Respondent's filing as a motion for final summary

order. Respondent seeks an order finding the subject claim not compensable as a matter of law and denying the petition, with prejudice.

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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).