

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAUREN M. AND KRISTOPHER M.  
SHOLD, as parents and natural  
guardians of AMELIA ANN SHOLD,

Petitioners,

vs.

Case No. 17-4793N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent,

and

BAPTIST HEALTH SYSTEM, INC.,  
d/b/a BAPTIST MEDICAL CENTER,

Intervenor.

\_\_\_\_\_ /

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon NICA's Unopposed Motion for Summary Final Order filed on October 15, 2018, by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA).

STATEMENT OF THE CASE

On August 9, 2017, Petitioners, Lauren M. and Kristopher M. Shold, on behalf of and as parents and natural guardians of Amelia Ann Shold (Amelia), a minor, 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 (the Plan). The Petition indicates in relevant part that the physician providing obstetric services, and who was present at the birth, was Staci Tanouye, M.D., and that Amelia was delivered at Baptist Medical Center (Baptist) on August 11, 2015.

DOAH served Baptist with a copy of the Petition on September 1, 2017. Dr. Tanouye was served with a copy of the Petition on September 5, 2017, and NICA was served a copy of the Petition on September 13, 2017.

On October 11, 2018, NICA filed its Unopposed Motion for Summary Final Order on the issue of a birth-related neurological injury. Through its motion, NICA requested the entry of a summary final order determining that the claim is not compensable as a matter of law because Amelia did not suffer a birth-related neurological injury as defined by section 766.302(2), Florida Statutes, and denying the Petition for Benefits, with prejudice.

#### STATEMENT OF THE ISSUE

The issue in this case is whether Amelia Ann Shold suffered a birth-related injury as defined by section 766.302(2), Florida Statutes, for which compensation should be awarded under the Plan.

## FINDINGS OF FACT

1. Amelia Ann Shold was born on August 11, 2015, at Baptist Medical Center South located at 800 Prudential Drive, Jacksonville, Florida 32207. The Petition alleged that the child "suffered from brain damage as a result of a prolonged second stage labor." The circumstances of the labor, delivery, and birth of the minor child are reflected in the medical records submitted to NICA in conjunction with the Petition.

2. At all times material, both Baptist and Dr. Tanouye were active members under NICA pursuant to section 766.302(6) and (7).

3. Petitioners contend that Amelia suffered a birth-related neurological injury and seeks compensation under the Plan. Respondent contends that Amelia has not suffered a birth-related neurological injury as defined by section 766.302(2).

4. 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 . . . .

(Emphasis added).

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

[I]njury 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).

6. In the instant case, NICA has retained Laufey Y. Sigurdardottir, M.D. (Dr. Sigurdardottir), as its medical expert specializing in pediatric neurology.

7. Dr. Sigurdardottir reviewed the medical records and conducted an independent medical examination (IME) of the child on November 16, 2017. Dr. Sigurdardottir subsequently rendered a report and opined, in pertinent part, that:

Summary: Patient is a 2-year-old girl with history of neonatal focal seizures and evidence of subdural and intraventricular hemorrhage along with several small foci of diffusion restriction in left frontal lobe after prolonged vaginal delivery. She has had a good developmental trajectory and currently exhibits mild right monoparesis and a mild expressive language delay. Substantial motor or mental delays are not noted.

\* \* \*

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

8. 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 Amelia does not suffer from a substantial mental and physical impairment at this time is credited.

CONCLUSIONS OF LAW

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

10. 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.

11. 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.

12. 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.

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. In the instant case, Petitioners filed a claim alleging that Amelia did sustain a birth-related neurological injury that is compensable under the Plan. As the proponent of the issue of compensability, the burden of proof is upon Petitioners.

§ 766.309(1) (a), Fla. Stat.; see also Balino v. Dep't of HRS, 348 So. 2d 349, 350 (Fla. 1st DCA 1977) ("[T]he burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.").

15. Dr. Sigurdardottir's opinion that "[I]n light of evidence presented I believe Amelia does not fulfill criteria of a substantial mental and physical impairment at this time. I do not feel that Amelia should be included in the NICA program," is credited.

16. In order for a birth-related injury to be compensable under the Plan, the injury must meet the definition of a birth-related neurological injury and the injury must have caused both permanent and substantial mental and physical impairment. Fla. Birth-Related Neurological Injury Comp. Ass'n v. Div. of Admin. Hearings, 686 So. 2d 1349 (Fla. 1997).



17. The evidence in this case reveals that there have been no expert opinions filed that are contrary to the opinion of Dr. Sigurdardottir that Amelia does not have a substantial mental or physical impairment acquired in the course of labor or delivery. Thus, Amelia has not suffered a birth-related neurological injury as defined by section 766.302(2), and is therefore not entitled to benefits under the Plan.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition filed by Lauren M. and Kristopher M. Shold, on behalf of and as parents and natural guardians of Amelia Ann Shold, a minor, is dismissed with prejudice.

DONE AND ORDERED this 23rd day of October, 2018, in Tallahassee, Leon County, Florida.



---

W. DAVID WATKINS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of October, 2018.

COPIES FURNISHED:  
(via certified mail)

Kenney Shipley, Executive Director  
Florida Birth Related Neurological  
Injury Compensation Association  
Suite 1  
2360 Christopher Place  
Tallahassee, Florida 32308  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0408)

Matthew W. Sowell, Esquire  
Terrell Hogan  
233 East Bay Street, 8th Floor  
Jacksonville, Florida 32202  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0415)

Jodi Barrett, Esquire  
Hall Booth Smith, PC  
Suite 109  
4360 Northlake Boulevard  
Palm Beach Gardens, Florida 33410  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0422)

M. Mark Bajalia, Esquire  
Bajalia Law  
Suite 301  
11512 Lake Mead Avenue  
Jacksonville, Florida 32256  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0439)

Allison C. McMillen, Esquire  
McMillen Law Firm, P.A.  
608 East Central Boulevard  
Orlando, Florida 32801  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0446)

Amie Rice, Investigation Manager  
Consumer Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-75  
Tallahassee, Florida 32399-3275  
(Certified Mail Number 7018 0040 0000 9779 0453)

Justin Senior, Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 1  
Tallahassee, Florida 32308  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0460)

Staci Tanouye, M.D.  
North Florida OB/GYN, LLC  
836 Prudential Drive, Suite 1103  
Jacksonville, Florida 32207  
(Certified Mail Number 7018 0040 0000 9779 0477)

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).