

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RYAN MICHAEL CRAIG, on behalf of  
and as parent and natural  
guardian of RYAN MAKYE CRAIG, a  
minor,

Petitioner,

vs.

Case No. 17-4797N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent.

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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 July 13, 2018. Petitioner did not file a response.

STATEMENT OF THE CASE

On August 16, 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 David Teitelbaum, M.D. as the physician who provided obstetric

services for the birth of Ryan M. Craig (Ryan) on September 4, 2015, at Central Florida Regional Hospital in Sanford, Florida.

DOAH served Respondent with a copy of the Petition on August 29, 2017. Central Florida Regional Hospital and Dr. Teitelbaum were served with a copy of the Petition on September 5, 2017, and October 5, 2017, respectively.

On April 11, 2017, Respondent filed its Response to Petition for Benefits, suggesting that the subject claim was not compensable and requesting a final hearing to address said issue. On May 9, 2018, the undersigned issued an Order requiring the parties to confer and advise whether a final hearing would be required. In response, on May 16, 2018, Respondent filed a Status Report representing that the parties were not requesting a final hearing, and that Respondent intended to file an Unopposed Motion for Summary Final Order.

On July 13 2018, Respondent filed an Unopposed Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim is not compensable because Ryan did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes, and dismissing the Petition. Said motion represents that Respondent has conferred with Petitioner concerning said motion and the relief sought, and that Petitioner does not oppose the relief

sought. As noted above, Petitioner did not file a response to the motion.

#### FINDINGS OF FACT

1. Ryan was born on September 4, 2015, at Central Florida Regional Hospital, in Sanford, Florida.

2. The physician providing obstetric services and who was present at Ryan's birth was Dr. David Teitelbaum. At the time of Ryan's birth, Dr. Teitelbaum was a NICA participating physician.

3. Respondent retained Donald Willis, M.D., an obstetrician specializing in maternal-fetal medicine, to review Ryan's medical records and opine as to whether there was an injury to his 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.

4. In a report dated April 5, 2018, Dr. Willis concluded the following:

In summary, labor was complicated by a non-reassuring FHR pattern requiring emergency Cesarean section delivery. The baby was depressed at birth with Apgar scores of 2/2/4. Resuscitation included chest compressions for 2 minutes, intubation and intravenous fluid bolus. Cooling protocol was initiated. The newborn hospital course was complicated by multi-system organ failures, including respiratory distress, hypotension, coagulopathy and elevated liver function studies. Despite the clinical findings of birth related hypoxia, only the initial EEG showed mild encephalopathy, which normalized. No abnormalities were reported

on brain MRI's after birth and at 6 months of age.

There was a clinically apparent obstetrical event that resulted in oxygen deprivation during labor, delivery and continuing into the immediate post-delivery period. The oxygen deprivation would have been expected to result in some degree of brain injury.

5. Attached to Respondent's Unopposed Motion for Summary Final Order is the affidavit of Dr. Willis, dated June 27, 2018. In his affidavit, Dr. Willis opines, based on his education, training, and experience, and within a reasonable degree of medical probability, that there was a clinically apparent obstetrical event that resulted in oxygen deprivation during labor, delivery, and continuing into the post-delivery period.

6. Respondent also retained Laufey Y. Sigurdardottir, M.D., a pediatric neurologist, to review Ryan's medical records, conduct an Independent Medical Examination (IME), and opine as to whether he 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 Ryan's father and family members, and conducted an IME of Ryan on November 22, 2017.

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

Summary: Patient is a 2-year-old male with history of being born via an emergency C-section after normal uncomplicated pregnancy. Apgar scores were low: 2 whole body cooling was performed at Florida Hospital at 1 minute, 2 at 5 minutes, 4 at 10 minutes and 6 at 15 minutes. And patient had neurologic sequelae including a cognitive impairment autistic features. Despite having early motor delays, he is currently ambulatory.

Result as to question 1: Ryan is found to have substantial delays in mental abilities but mild delays in motor abilities at this time.

Result as to question 2: 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.

Result as to question 3: The prognosis for full motor recovery is good but mental recovery is unlikely and need for vast therapies to improve his language development and decrease autistic features is needed. His life expectancy is excellent.

In light of evidence presented, I believe Ryan does not fulfill criteria of both substantial and mental and physical impairments at this time. I do not feel that Ryan should be included in the NICA program for that reason.

8. Respondent's Unopposed Motion for Summary Final Order also relies upon the attached affidavit of Dr. Sigurdardottir, dated June 25, 2018. In her affidavit, she opines, based upon her education, training and experience, and to a reasonable degree of medical probability, that Ryan "has substantial delays

in mental abilities," however, "he has only mild delays in motor abilities."

9. 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

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. The evidence establishes that there was an obstetrical event that resulted in loss of oxygen to Ryan's brain during the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital, and that he sustained a permanent and substantial mental impairment as a result thereof. The undisputed evidence further establishes that Dr. Teitelbaum was a NICA participating physician at the time of Ryan's birth. The unrefuted evidence, however, establishes that Ryan did not sustain a permanent and substantial physical impairment. Thus, he did not sustain a birth-related neurological injury as defined in section 766.302(2), Florida Statutes, 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 9th day of August, 2018, in Tallahassee, Leon County, Florida.



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TODD P. RESAVAGE  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 9th day of August, 2018.

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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).