

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KARA REID and BENNET REID,
Individually and on behalf of
ANDREW G. REID, a minor,

Petitioners,

vs.

Case No. 17-5569N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

JOHN H. MARSTON, M.D.; WOMEN'S
CARE FLORIDA; AND ST. JOSEPH'S
HOSPITAL, INC., d/b/a ST.
JOSEPH'S WOMEN'S HOSPITAL,

Intervenors.

_____ /

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 April 27, 2018. Neither Petitioners nor Intervenors filed a response.

STATEMENT OF THE CASE

On September 22, 2017, Petitioners 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 John H. Marston, M.D., as the physician who provided obstetric services for the birth of Andrew G. Reid (Andrew) on May 2, 2015, at St. Joseph's Women's Hospital in Tampa, Florida.

DOAH served NICA with a copy of the Petition on or before October 23, 2017. Dr. Marston and St. Joseph's Women's Hospital were served with a copy of the Petition on or before October 27 and November 16, 2017, respectively. On October 31, 2017, Dr. Marston's and St. Joseph's Hospital, Inc., d/b/a St. Joseph's Women's Hospital's Petitions to Intervene were granted.

On March 30, 2018, NICA 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 April 2, 2018, the undersigned issued an Order directing the parties to confer and advise whether a final hearing would be required. NICA filed a status report on April 12, 2018, representing that, following a telephonic conference with all counsel, none of the parties were requesting a final hearing.

On April 27, 2018, NICA filed an Unopposed Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim is not compensable because Andrew 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 Petitioners and Intervenors "take no position on this motion." As noted above, Petitioners and Intervenors did not file a response to the motion.

FINDINGS OF FACT

1. Andrew was born on May 2, 2015, at St. Joseph's Women's Hospital in Tampa, Florida.

2. NICA retained Donald Willis, M.D., an obstetrician specializing in maternal-fetal medicine, to review Andrew'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.

3. In a report dated November 26, 2017, Dr. Willis concluded the following:

There was no obstetrical event that resulted in loss of oxygen or mechanical trauma to the baby's brain during labor or delivery. However, some oxygen deprivation was present during the immediate post-delivery period. Due to the essentially normal MRI report, I would prefer to have Pediatric Neurology discuss if any oxygen deprivation during the immediate post-delivery period resulted in brain injury.

4. Attached to NICA's Unopposed Motion for Summary Final Order is the affidavit of Dr. Willis, dated April 23, 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 no obstetrical event that resulted in loss of oxygen or mechanical trauma to Andrew's brain during the labor or delivery; however, some oxygen deprivation was present during the immediate post-delivery period.

5. NICA also retained Laufey Y. Sigurdardottir, M.D., a pediatric neurologist, to review Andrew'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 Petitioners, and conducted an IME of Andrew on March 7, 2018.

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

Summary: Patient is a 2-year-old with history of neurologic depression at birth and laboratory measurements suggestive of asphyxia. Neonatal seizures were seen and multisystem derangements noted. Patient had hypotonia and required early intervention. He has made remarkable recovery and now has mild delays in gross and fine motor skills along with an expressive language disorder.

7. Dr. Sigurdardottir further concluded that, in review of the available records, there is evidence of impairment consistent with a neurologic injury to the brain or spinal cord acquired due

to oxygen deprivation, and that the neurologic injury was felt to be birth related. She further concluded that, at the time of the IME, Andrew did not have substantial delays in motor and mental abilities, and, therefore, does not fulfill the criteria of a substantial mental and physical impairment.

8. Respondent's Unopposed Motion for Summary Final Order also relies upon the attached affidavit of Dr. Sigurdardottir, dated April 17, 2018. In her affidavit, she opines, based upon her education, training, and experience, and to a reasonable degree of medical probability, that Andrew "is not found to have substantial delays in motor and mental abilities at this time."

9. A review of the file reveals that 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. 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.

13. NICA has determined that Petitioners do 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).

§ 766.309(1), Fla. Stat.

15. The term "birth-related neurological injury" is defined in section 766.302(2) as follows:

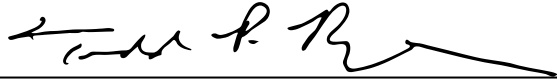
"Birth-related neurological injury" means injury to the brain or spinal cord of a live infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or mechanical injury occurring 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 Andrew's brain during the immediate post-delivery period. The unrefuted evidence, however, establishes that Andrew did not sustain a permanent and substantial mental and 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 May, 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 9th day of May, 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).