

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAYLA CAMILLE MOORE, A MINOR
CHILD, BY AND THROUGH HER NEXT
FRIENDS, NATURAL GUARDIANS AND
NATURAL PARENT, COLLETTE WRIGHT;
COLLETTE WRIGHT, INDIVIDUALLY
AND AS MOTHER OF JAYLA CAMILLE
MOORE,

Petitioner,

vs.

Case No. 17-5787N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION (NICA),

Respondent,

and

UNIVERSITY OF FLORIDA BOARD OF
TRUSTEES AND SHANDS TEACHING
HOSPITAL AND CLINICS, INC.,

Intervenors.

_____ /

SUMMARY FINAL ORDER

This cause came before the undersigned upon the parties' Joint Motion to Submit Stipulated Factual Record in Lieu of a Contested Hearing (Joint Motion) and Joint Stipulation Regarding Facts Not in Dispute, filed April 9, 2019. The Joint Motion was granted on April 10, 2019. Thereafter, the parties filed a Stipulated Record on April 19, 2019. Proposed Final Orders were

timely submitted by Respondent and Intervenors. Petitioner did not file a proposed final order.

STATEMENT OF THE ISSUES

Whether Jayla Camille Moore (Jayla) suffered a birth-related neurological injury as defined by section 766.302(2), Florida Statutes; 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; whether the notice requirements in section 766.316 were satisfied; and if Petitioner's claim is found to be compensable, how much compensation, if any, is awardable pursuant to section 766.31.

PRELIMINARY STATEMENT

On October 2, 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 matter was assigned to Administrative Law Judge (ALJ) W. David Watkins.

The Petition named Jessica Rose Jackson, M.D., as the physician who provided obstetric services at the birth of Jayla on January 8, 2016, at University of Florida Health Shands Hospital (Shands), in Gainesville, Florida.

On October 24, 2017, DOAH mailed a copy of the Petition to Respondent, Shands, and Dr. Jackson by certified mail. Respondent was served with the Petition on or before November 6, 2017.

On April 30, 2018, Petitioner filed a motion to amend the Petition, and the motion was granted on May 14, 2018. Pursuant to the Amended Petition, Petitioner avers that Sharon Young Byun, M.D., was the admitting physician and a NICA participating physician; however, Dr. Byun did not "see" Petitioner. The Amended Complaint also avers that Jessica Morgan Greer, M.D., performed the Cesarean section on Collette Wright; however, Dr. Greer was not a participating NICA physician. Pursuant to the Amended Complaint, Dr. Jackson is alleged to be a participating NICA physician at the time of birth; however, Dr. Jackson is alleged to have not performed the Cesarean section.

Following several extensions of time to respond to the Amended Petition, Respondent filed its Response to Amended Petition on September 21, 2018, wherein Respondent suggested that the claim was compensable and requested a bifurcated hearing to first address compensability. Thereafter, ALJ Watkins issued an Order requiring the parties to provide a written status report setting forth, inter alia, the issues that remained in dispute. In response, on October 8, 2018,

Petitioner filed a status report, and then an amended status report on October 16, 2018.

Pursuant to Petitioner's Amended Status Report, Petitioner represented that she was requesting a hearing on whether adequate notice was provided, and whether Petitioner's claim was compensable under the Plan. Petitioner averred that the injury was caused by a placental abruption which occurred prior to admission. Pursuant to the filing, Petitioner further represented that Petitioner does not dispute Respondent's determination that Jayla is permanently and substantially mentally and physically impaired. Petitioner further represented that Petitioner does not dispute that obstetrical services were provided by Dr. Jackson, who was a NICA-participating physician, at the time of Jayla's birth.

On October 8, 2018, the University of Florida Board of Trustees and Shands Teaching Hospital and Clinics, Inc., filed their respective Petitions to Intervene, and the same were granted on October 17, 2018.^{1/}

On October 17, 2018, the final hearing was noticed for December 20, 2018. On the same date, the matter was reassigned to the undersigned for all further proceedings. On November 29, 2018, the parties filed a Joint Motion to Continue Final Hearing, which was granted on November 30, 2018. After the

parties engaged in further discovery, on January 17, 2019, the final hearing was noticed for April 23, 2019.

On April 9, 2019, the parties filed the Joint Motion and Joint Stipulation. The Joint Motion was granted on April 10, 2019. Thereafter, the parties filed a Stipulated Record on April 19, 2019. Proposed Final Orders were timely submitted by Respondent and Intervenors. Petitioner did not file a proposed final order.

FINDINGS OF FACT

1. Pursuant to the Joint Stipulation, the following facts are stipulated and undisputed:

A. Petitioner, Collette Wright was given timely and adequate notice on behalf of the NICA participating physicians and on behalf of UF Health Shands Hospital, in compliance with section 766.316, Florida Statutes.

B. Jayla Moore has suffered a neurological injury to her brain and/or spinal cord rendering her permanently and substantially mentally and physically impaired.

C. The obstetrical care rendered to Petitioner, Collette Wright, during the course of her labor, the delivery of her daughter, Jayla, and the resuscitation in the immediate post-delivery period, was provided at UF Health Shands Hospital by a participating NICA physician at the said hospital.

2. Jayla was born on January 8, 2016, at Shands. She was a single gestation, weighing over 2,500 grams at birth.

3. Respondent retained Donald Willis, M.D., who is board-certified in obstetrics, gynecology, and maternal-fetal medicine, to review the medical records of Jayla and her mother, Collette Wright, and opine as to whether there was an injury to Jayla's brain or spinal cord that occurred in the course of labor, delivery, or resuscitation in the immediate postdelivery period due to oxygen deprivation or mechanical injury. In his supplemental report, dated September 14, 2018, Dr. Willis set forth the following, in pertinent part:

The mother was a 25 year[s] old G2 P1001. Her first prenatal visit was at 15 weeks gestational age. Prenatal care was uncomplicated.

The mother presented to the hospital at 41 weeks gestational age for induction of labor. Her cervix was 1 cm dilated and not effaced. FHR monitor showed uterine contractions about every 3 minutes. The FHR tracing was non-reassuring on admission with markedly reduced variability and spontaneous decelerations. The patient was taken to the OR for a stat Cesarean Section due to the abnormal FHR tracing.

Placental abruption was diagnosed at delivery. About 500 cc's of blood and clots were noted in the uterus. Birth weight was 4,301 grams. The baby was depressed at birth. Apgar scores were 1/6. Cord blood gas had a pH of 7.06 with a base of - 10.4.

* * *

The baby had respiratory failure at birth and bradycardia with a heart rate in the 40's. Heart rate slowly increased after intubation. Respiratory status improved and

baby was extubated. The baby went to the NICU on CPAP, but was noted to be pale and with apnea in the NICU, requiring re-intubation and intravenous fluid bolus. The initial blood gas was a venous sample at about 2 hours after birth. The pH was 7.09 with a base excess of - 13. Respiratory failure was felt to be related to birth hypoxia.

The baby did not meet criteria for cooling protocol immediately after birth, but modified cooling was initiated shortly after birth due to onset of seizure activity. Antibiotics were started. Blood cultures and spinal tap were done. Both cultures and HSV testing were negative or no growth.

Head ultrasound on the day of birth was normal. MRI on DOL 4 was consistent with severe global hypoxic ischemic [sic] with diffuse destruction of both cerebral hemispheres.

The newborn hospital course was complicated by multi-system organ failures, including respiratory distress, seizures, acute renal insufficiency, elevated liver functions and feeding difficulty requiring Nissen Fundoplication.

In summary, labor was complicated by a placental abruption and abnormal FHR tracing during labor. The baby was depressed at birth with Apgar scores of 1/6 and a cord blood gas pH of 7.06. The newborn hospital course was complicated by multi-system organ failures, consistent with birth related oxygen deprivation. MRI findings were consistent with severe HIE.

There was an apparent obstetrical event that resulted in oxygen deprivation to the baby during labor, delivery and continuing into the immediate post-delivery period. The oxygen deprivation resulted in brain injury.

4. Dr. Willis was deposed on March 28, 2019. At his deposition, Dr. Willis affirmed the findings and opinions in the above noted report. Dr. Willis testified that in his opinion, to a reasonable degree of medical probability, the oxygen deprivation that resulted in injury to Jayla's brain occurred in the course of labor, delivery, or resuscitation in the immediate post delivery period.

5. A review of the file reveals that no contrary evidence was presented to dispute the findings and opinions of Dr. Willis and the same are credited.

CONCLUSIONS OF LAW

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

7. 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.

8. 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.

9. If NICA determines that the injury alleged is a claim that is a compensable birth-related neurological injury, it may award compensation to the claimant, provided that the award is approved by the ALJ to whom the claim has been assigned.

§ 766.305(7), Fla. Stat. If, on the other hand, compensability is disputed, as here, the dispute must be resolved by the assigned ALJ in accordance with the provisions of chapter 120, Florida Statutes. §§ 766.304, 766.309, and 766.31, Fla. Stat.

10. In discharging this responsibility, the ALJ is required to make the following threshold determinations 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.

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 establishes that Jayla was born a live infant weighing at least 2,500 grams. The unrefuted evidence further establishes that there was an injury to Jayla's brain caused by oxygen deprivation occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital. The undisputed evidence further establishes that said injury has rendered her permanently and substantially mentally and physically impaired.

13. The undisputed evidence further establishes that obstetrical services were delivered by a participating physician, Dr. Jackson, in the course of labor, delivery, or

resuscitation in the immediate postdelivery period in a hospital, Shands. Accordingly, the undersigned concludes that Jayla has sustained a compensable birth-related neurological injury.

14. Section 766.315(1)(d) further provides that, if raised by the claimant or other party, the ALJ shall make factual determinations regarding whether the notice requirements of section 766.316 are satisfied. Although Petitioner previously raised the notice issue, Petitioner now stipulates that said notice requirements were satisfied.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. The claim for compensation filed by Petitioner is compensable.
2. Intervenors complied with the statutory notice requirements of the NICA Plan pursuant to section 766.316, Florida Statutes.
3. Jurisdiction is retained to resolve the amount of compensation due. Within thirty (30) days from the date of this Order, the parties shall resolve, subject to approval of the undersigned, the amount and manner of payment of an award to Petitioner; the reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees

and costs; and the amount owing for expenses previously incurred. If not resolved within such period, the parties shall so advise the undersigned, and a hearing will be scheduled to resolve such issues. Once resolved, an award will be made consistent with section 766.31.

DONE AND ORDERED this 20th day of May, 2019, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
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 20th day of May, 2019.

ENDNOTE

^{1/} Pursuant to the intervention petitions, Shands Teaching Hospital and Clinics, Inc., owns and operates University of Florida Health Shands Hospital, and said hospital employed the nursing staff involved in Jayla's labor and delivery; and the University of Florida Board of Trustees is Dr. Jackson's employer.

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 No. 7018 0040 0000 9774 0786)

David Ryan Best, Esquire
Best Law Firm Florida, P.A.
Post Office Box 3306
Orlando, Florida 32802
(eServed)
(Certified Mail No. 7018 0040 0000 9774 0793)

Brooke M. Gaffney, Esquire
Smith, Stout, Bigman & Brock, P.A.
Suite 900
444 Seabreeze Boulevard
Daytona Beach, Florida 32118
(eServed)
(Certified Mail No. 7018 0040 0000 9774 0809)

Brian Boelens, Esquire
Florida Board of Governors
Self-Insurance Programs
Post Office Box 112735
Gainesville, Florida 32611
(eServed)
(Certified Mail No. 7018 0040 0000 9774 0816)

Daniel Joseph D'Alesio, Esquire
University of Florida
J. Hillis Miller Health Center Self-Insurance Program
Tower 1, 7th Floor
580 West 8th Street
Jacksonville, Florida 32209
(eServed)
(Certified Mail No. 7018 0040 0000 9774 0823)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7018 0040 0000 9774 0830)

Mary C. Mayhew, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail No. 7018 0040 0000 9774 0847)

UF Shands Hospital
Attention: Risk Management
1515 Southwest Archer Road
Gainesville, Florida 32608
(Certified Mail No. 7018 0040 0000 9774 0854)

Jessica Rose Jackson, M.D.
Box 100294/M301 MBS
Gainesville, Florida 32610
(Certified Mail No. 7018 0040 0000 9774 0861)

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).