

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SORALIZ M. CARTAGENA, on behalf
of and as parent and natural
guardian of JALIYAH FIGUEROA, a
minor,

Petitioner,

vs.

Case No. 17-5788N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

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 September 4, 2018.

STATEMENT OF THE CASE

On October 18, 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 Dr. Maria Martino and Dr. Krysta Fee as the physicians who provided obstetric services for the birth of

Jaliyah Figueroa (Jaliyah) on March 7, 2017, at Lakeland Regional Medical Center in Lakeland, Florida.^{1/}

On October 24, 2017, DOAH mailed a copy of the Petition to NICA by certified mail. The certified receipt indicates the same was served on November 6, 2017. On October 24, 2017, DOAH mailed copies of the Petition by certified mail to Lakeland Regional Medical Center; Maria Martino, M.D.; Krysta Fee, ARNP; and Maria Martino-Villanueva, M.D. On November 29, 2017, Lakeland Regional Health Systems, Inc.'s Petition for Leave to Intervene was granted.^{2/}

On January 16, 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. Ultimately, Petitioner retained counsel on or before April 3, 2018, and the parties proceeded with discovery. NICA's Motion was filed on September 4, 2018, requesting that a summary final order be entered finding that the claim is not compensable because Jaliyah did not sustain a "birth-related neurological injury" as that term is defined in section 766.302(2), Florida Statutes, and dismissing the Petition with prejudice. Said motion represents that Petitioner does not oppose the instant motion.

FINDINGS OF FACT

1. Jaliyah was born on March 7, 2017, at Lakeland Regional Medical Center.

2. With respect to Jaliyah's birth, obstetrical services were delivered by Maria Martino, M.D., a NICA participating physician, in the course of labor, delivery, or resuscitation in the immediate postdelivery period.

3. NICA retained Donald Willis, M.D., an obstetrician specializing in maternal-fetal medicine, to review Jaliyah's medical records and opine as to whether there was an injury to her 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. In his report and subsequent affidavit (attached to NICA's Motion), Dr. Willis opines that "there was an obstetrical event that resulted in loss of oxygen to the baby's brain during labor, delivery and continuing into the immediate post deliver [sic] period. The oxygen deprivation resulted in brain injury."

4. NICA also retained Laufey Y. Sigurdardottir, M.D., a pediatric neurologist, to review Jaliyah's medical records, conduct an Independent Medical Examination (IME), and opine as to whether she 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 Petitioner, and conducted an IME of Jaliyah on December 13, 2017.

5. Dr. Sigurdardottir's affidavit, attached to NICA's Motion, provides in pertinent part, as follows:

Based upon my education, training and experience, it is my professional opinion, within a reasonable degree of medical probability that although there is evidence of impairment consistent with a neurologic injury to the brain or spinal cord acquired due to oxygen deprivation or mechanical injury, Jaliyah is not found to have substantial delays in motor and mental abilities. Her prognosis for full motor and mental recovery is excellent and her life expectancy is full.

6. 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

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

8. 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.

9. 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.

10. NICA has determined that Petitioner does not have a claim that is compensable under the Plan and has filed the instant Unopposed Motion for Summary Final Order, requesting that an order be entered finding that the claim is not compensable.

11. In ruling on the motion, the administrative law judge must 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.

12. 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.

13. The evidence establishes that there was an obstetrical event that resulted in loss of oxygen to Jaliyah's brain during labor, delivery, and continuing into the immediate postdelivery period, resulting in an injury to her brain. The evidence further establishes that obstetrical services were delivered by a participating physician, Dr. Martino, in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, Lakeland Regional Health. The unrefuted evidence, however, establishes that Jaliyah did not sustain a permanent and substantial mental and physical impairment. Thus, she 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 7th day of September, 2018, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of September, 2018.

ENDNOTES

^{1/} NICA's Motion avers that Krysta Fee is not a physician, but rather, a nurse practitioner.

^{2/} On September 5, 2018, Intervenor filed a Notice of Withdrawal of Motion to Intervene, which was granted on the same date.

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).