

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHENEAR WALKER-LAWRENCE AND
CHRISTOPHER LAWRENCE, SR., on
behalf of and as parents and
natural guardians of CHRISTOPHER
WALKER-LAWRENCE, a minor,

Petitioners,

vs.

Case No. 17-6445N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon NICA's Unopposed Motion for Summary Final Order filed on July 13, 2018, by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA).

STATEMENT OF THE CASE

On November 8, 2017, Petitioners, Shenear Walker-Lawrence and Christopher Lawrence, Sr., on behalf of and as parents and natural guardians of Christopher Walker-Lawrence (Christopher), a minor, filed a Petition Under Protest 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 and/or medical providers providing obstetric services, who were present at the birth, were Carlos Reyes, M.D., and Kimberly Griner, C.N.M., and that Christopher was delivered at Bayfront Health St. Petersburg (Bayfront) on November 29, 2015.

DOAH served NICA, Bayfront, Dr. Reyes, and Kimberly Griner with a copy of the Petition on November 28, 2017.

On July 13, 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 Christopher 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 Christopher Walker-Lawrence 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. Christopher Walker-Lawrence was born on November 29, 2015, at Community Health Systems, Inc., d/b/a Bayfront Health St. Petersburg, in St. Petersburg, Florida. Christopher weighed in excess of 2,500 grams at birth. The circumstances of the

labor, delivery, and birth of the minor child are reflected in the medical records of Bayfront provided to NICA.

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

3. Christopher was delivered via Caesarean section by Dr. Reyes, who was a NICA-participating physician, on November 29, 2015, at 12:41 p.m.

4. Petitioner contends that Christopher suffered a birth-related neurological injury and seeks compensation under the Plan, under protest. Respondent contends that Christopher has not suffered a birth-related neurological injury as defined by section 766.302(2).

5. 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

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

. . . 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. 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 Donald C. Willis, M.D. (Dr. Willis), as its medical expert specializing in maternal-fetal medicine and pediatric neurology, and pediatric neurologist, Dr. Laufey Y. Sigurdardottir. Upon examination of

the pertinent medical records, Dr. Willis opined in relevant part that:

there was no loss of oxygen during labor. The significant acidosis documented by the cord blood gas indicates the baby suffered oxygen deprivation prior to delivery, during the eight hour period of decreased fetal movement. Although there may have been some ongoing oxygen deprivation during the actual delivery and continuing into the immediate post-delivery period, it is more likely the bulk of the brain injury had already occurred prior to birth. The oxygen deprivation that occurred prior to delivery resulted in brain injury.

Dr. Willis's medical Report is attached to his Affidavit. His Affidavit reflects his ultimate opinion that "Although there may have been some ongoing oxygen deprivation during the actual delivery and continuing into the immediate post-delivery period, it is more likely the bulk of the brain injury had already occurred prior to birth."

7. 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. Willis. The opinion of Dr. Willis that Christopher did not suffer an obstetrical event that resulted in loss of oxygen or mechanical trauma to the baby's brain or spinal cord during labor, delivery, or the immediate post-delivery period is credited.

8. In the instant case, NICA has retained Laufey Y. Sigurdardottir, M.D. (Dr. Sigurdardottir), as its medical expert

in pediatric neurology. Upon examination of the child and the pertinent medical records, Dr. Sigurdardottir opined:

Patient is a 2-year-old boy with history of moderate hypoxic ischemic encephalopathy and scattered intraparenchymal and intraventricular hemorrhage noted after cooling was completed. Initial abnormalities were noted on neurologic exam but he has made a full recovery and has normal development at this time.

Result as to question 1: Christopher is found to have no delays in motor and/or mental abilities.

Result as to question 2: In review of available documents, there is evidence of a neurologic injury to the brain or spinal cord acquired due to oxygen deprivation or mechanical injury. This is felt to be labor/birth related.

Result as to question 3: The prognosis for full motor and mental recovery is excellent and the life expectancy is full.

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

Dr. Sigurdardottir's medical report is attached to her Affidavit. Her Affidavit reflects her ultimate opinion that "although there is evidence of a neurologic injury to the brain or spinal cord acquired due to oxygen deprivation or mechanical injury that is felt to be labor/birth related, Christopher Walker-Lawrence has

made a full recovery and has normal development at this time. He has no delays in motor or mental abilities."

9. 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 Christopher did not suffer a substantial mental or physical impairment acquired in the course of labor or delivery is credited.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings 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. 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.

14. 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.

15. In the instant case, Petitioner filed a claim (albeit under protest) alleging that Christopher 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 Petitioner. § 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.").

16. Dr. Willis' opinion that "Christopher did not suffer an obstetrical event that resulted in loss of oxygen or mechanical trauma to the baby's brain or spinal cord during labor, delivery, or the immediate post-delivery period" and Dr. Sigurdardottir's

opinion that "[I]n light of evidence presented I believe Christopher does not fulfill criteria of a substantial mental and physical impairment at this time" are credited.

17. 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).

18. The evidence in this case reveals that there have been no expert opinions filed that are contrary to the opinions of Drs. Willis and Sigurdardottir that Christopher does not have a permanent substantial mental or motor impairment acquired in the course of labor or delivery. Thus, Christopher 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 Sheneer Walker-Lawrence and Christopher Lawrence, Sr., on behalf of and as parents and natural guardians of Christopher Walker-Lawrence, is dismissed with prejudice.

DONE AND ORDERED this 16th day of July, 2018, in
Tallahassee, Leon County, Florida.



W. DAVID WATKINS
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Filed with the Clerk of the
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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).