

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MORGAN AND STEVEN LAZZARA, on  
behalf of and as parents and  
natural guardians of NOBLE  
LAZZARA, a minor,

Petitioners,

vs.

Case No. 18-1408N

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 5, 2018.

STATEMENT OF THE CASE

On February 28, 2018, Petitioners filed a Petition for Benefits (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 Prashanti Logeswaran, M.D., as the physician who provided obstetric services for the birth of Noble

Lazzara (Noble) on May 4, 2017, at Bayfront Health St. Petersburg/Bayfront Baby Place in Lakeland, Florida.

On March 21, 2018, DOAH mailed a copy of the Petition to NICA by certified mail. NICA was served with the same on or before March 29, 2018. On March 21, 2018, DOAH mailed copies of the Petition by certified mail to Dr. Logeswaran and Bayfront Health St. Petersburg.

On June 25, 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 July 2, 2018, the undersigned issued an order requiring the parties to advise whether a final hearing would be required; and, if so, to advise the undersigned of when the parties would be prepared to proceed, the remaining issues, an estimate of time, and choice of venue. On July 23, 2018, NICA provided a written status report wherein it was represented that, after consultation, neither party was requesting a hearing and that NICA intended to file an unopposed motion for summary final hearing.

On September 5, 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 Noble 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 Petitioners do not oppose the instant motion.

FINDINGS OF FACT

1. Noble was born on May 4, 2017, at Bayfront Health St. Petersburg. Noble was a single gestation, weighing over 2,500 grams at birth.

2. With respect to Noble's birth, obstetrical services were provided by Prashanti Logeswaran, M.D., a NICA participating physician, in the course of labor, delivery, or resuscitation in the immediate post-delivery period.

3. NICA retained Donald Willis, M.D., an obstetrician specializing in maternal-fetal medicine, to review Noble'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. In his report dated June 18, 2018, Dr. Willis set forth the following:

In summary, what appeared to be an uneventful vaginal birth resulted in newborn depression with Apgar scores of 3/4/6. Bag and mask ventilation was required at birth, followed by CPAP in the nursery. ABG at one hour after birth was consistent with acidosis. The pH was 7.18 with a base excess of -11. Seizure activity developed within the first 24 hours after birth and was confirmed by EEG. MRI on DOL 3 had findings consistent with ischemic brain injury.

There was no apparent obstetrical event that resulted in oxygen deprivation during labor and delivery, but oxygen deprivation did occur in the post-delivery period. The oxygen deprivation resulted in brain injury.

4. Dr. Willis affirms in his affidavit, dated September 4, 2018, the above-quoted opinion based upon his education, training, experience, and to a reasonable degree of medical probability.

5. NICA also retained Laufey Y. Sigurdardottir, M.D., a pediatric neurologist, to review Noble'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 information regarding Noble's developmental trajectory from Petitioners, and conducted an IME of Noble on May 23, 2018.

6. 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, he has made an excellent recovery and has minimal delays in development at this time. He has no delays in mental abilities.

7. 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

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

9. 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.

10. 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.

11. 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 Administrative Law Judge (ALJ) to whom the claim

has been assigned. § 766.305(7), Fla. Stat. If, on the other hand, NICA disputes the claims, 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.

12. 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.

13. 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

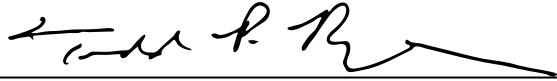
infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired.

14. The evidence establishes that there was oxygen deprivation to Noble's brain occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period, resulting in an injury to Noble's brain. The evidence further establishes that obstetrical services were delivered by a participating physician, Dr. Logeswaran, in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital, Bayfront Health St. Petersburg. The unrefuted evidence, however, establishes that Noble 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) 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 12th day of September, 2018, in  
Tallahassee, Leon County, Florida.



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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 12th day of September, 2018.

COPIES FURNISHED:  
(via certified mail)

Brent R. Bigger, Esquire  
Knopf Bigger  
511 West Bay Street, Suite 450  
Tampa, Florida 33606  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0040)

Kenney Shipley, Executive Director  
Florida Birth Related Neurological  
Injury Compensation Association  
2360 Christopher Place, Suite 1  
Tallahassee, Florida 32308  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0057)

Robin Treto, Esquire  
Knopf Bigger  
1560 North Orange Avenue, Suite 220  
Winter Park, Florida 32789  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0064)



Brooke M. Gaffney, Esquire  
Smith, Stout, Bigman & Brock, P.A.  
444 Seabreeze Boulevard, Suite 900  
Daytona Beach, Florida 32118  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0071)

Amie Rice, Investigation Manager  
Consumer Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-75  
Tallahassee, Florida 32399-3275  
(Certified Mail Number 7018 0040 0000 9779 0088)

Justin Senior, Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 1  
Tallahassee, Florida 32308  
(eServed)  
(Certified Mail Number 7018 0040 0000 9779 0095)

Bayfront Health St. Petersburg  
Attention: Risk Management  
701 6th Street South  
St. Petersburg, Florida 33701  
(Certified Mail Number 7018 0040 0000 9779 0101)

Prashanti Logeswaran, M.D.  
603 7th Street South, Suite 300  
St. Petersburg, Florida 33701  
(Certified Mail Number 7018 0040 0000 9779 0118)

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).