

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SHEILA GONZALEZ, on behalf of  
and as parent and natural  
guardian of JAYDEN JACOMINO, a  
minor,

Petitioner,

and

ORLANDO HEALTH, INC., d/b/a  
WINNIE PALMER HOSPITAL FOR WOMEN  
AND BABIES; AND MEGAN PIPER  
GRAY, M.D.,

Intervenor,

vs.

Case No. 18-1801N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent.

\_\_\_\_\_ /

SUMMARY FINAL ORDER OF DISMISSAL

This cause came for consideration on 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 March 22, 2018, Petitioner, Sheila Gonzalez, on behalf of and as parent and natural guardian of, Jayden Jacomina ("Jayden"), a minor, filed a Petition for Benefits Pursuant to Florida Statute

Section 766.301 et seq. ("Petition") with the Division of Administrative Hearings ("DOAH") for the determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan ("Plan").

The Petition named Megan Piper Gray, M.D., as the physician who provided obstetric services at the birth of Jayden on February 8, 2015, at Intervenor Orlando Health, Inc., d/b/a Winnie Palmer Hospital for Women and Babies ("Orlando Health Hospitals").

DOAH served Dr. Gray with a copy of the Petition on April 19, 2018, and upon Orlando Health Hospitals on or about April 25, 2018. NICA was served with a copy of the Petition on April 16, 2018.

On June 25, 2018, NICA filed its response to the Petition, suggesting that the subject claim was not compensable and requesting that a hearing be scheduled to address such issue. On July 19, 2018, the undersigned issued an Order directing the parties to confer and advise whether a final hearing would be required. On July 26, 2018, NICA filed a response to the Order indicating that no party requested a final hearing in this matter.

On September 4, 2018, NICA filed an Unopposed Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim was not compensable because Jayden

did not suffer a "birth-related neurological injury" as defined in section 766.302(2), Florida Statutes.

FINDINGS OF FACT

1. Jayden was born on February 8, 2015, at Orlando Health Hospitals located in Orlando, Florida.

2. NICA retained Donald Willis, M.D., an obstetrician/gynecologist, specializing in maternal-fetal medicine, as well as pediatric neurologist, Laufey Y. Sigurdardottir, M.D., to review Jayden's medical records. NICA sought to obtain an opinion whether an injury to Jayden's brain or spinal cord at birth caused by oxygen deprivation or mechanical injury occurred in the course of labor, delivery, or resuscitation in the immediate post-delivery period, and whether that injury rendered Jayden permanently and substantially mentally and physically impaired.

3. Dr. Willis reviewed Jayden's medical records and opined, within a reasonable degree of medical probability, that:

[T]here was no apparent obstetrical event that resulted in oxygen deprivation or mechanical trauma during labor, delivery and the immediate post-delivery period.

4. Dr. Sigurdardottir also reviewed Jayden's medical records, as well as examined Jayden on May 29, 2018.

Dr. Sigurdardottir found that Jayden exhibits a neurodevelopment disorder with a severe language delay, as well as autistic

features. However, Dr. Sigurdardottir also opined that, within a reasonable degree of medical probability:

Jayden is not found to have substantial delays in motor abilities.

5. A review of the file reveals that no contrary evidence disputes the findings and opinions of Dr. Willis and Dr. Sigurdardottir. Their opinions are credible and persuasive.

6. Based on the opinions and conclusions of Dr. Willis and Dr. Sigurdardottir, NICA determined that Petitioner's claim was not compensable. NICA subsequently filed the Motion for Summary Final Order asserting that Jayden has not suffered a "birth-related neurological injury" as defined by section 766.302(2). Neither Petitioner nor Intervenor opposes NICA's motion.

#### CONCLUSIONS OF LAW

7. The undersigned, as an Administrative Law Judge, has exclusive jurisdiction over the subject matter of this proceeding. § 766.304, Fla. Stat.

8. The Florida Legislature established the Plan "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, then 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. If NICA determines that the injury alleged in a claim 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 to whom the claim has been assigned. § 766.305(7), Fla. Stat.

11. In this matter, however, NICA has determined that Petitioner's claim is not compensable under the Plan. Therefore, NICA filed a Motion for Summary Final Order, requesting an order be entered finding that the claim is not compensable.

12. In ruling on NICA's motion, section 766.309(1) provides that 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. 766.302(2).

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

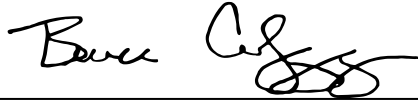
"Birth-related neurological injury" means injury to the brain or spinal cord of a live infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or mechanical injury occurring 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. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality.

14. The undisputed evidence establishes that there was no obstetrical event that caused the loss of oxygen to Jayden's brain or spinal cord during labor, delivery, or the immediate post-delivery period. The undisputed evidence further establishes that Jayden did not suffer a substantial mental impairment.<sup>1/</sup> Thus, Jayden did not sustain a "birth-related neurological injury" as defined in section 766.302(2). Accordingly, Petitioner is not eligible for benefits under the Plan.

#### DISPOSITION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition is dismissed, with prejudice.

DONE AND ORDERED this 21st day of September, 2018, in  
Tallahassee, Leon County, Florida.



---

J. BRUCE CULPEPPER  
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 21st day of September, 2018.

ENDNOTE

<sup>1/</sup> "The [NICA] Statute is written in the conjunctive and can only be interpreted to require permanent and substantial impairment that has both physical and mental elements." (emphasis added). Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings, 686 So. 2d 1349, 1356 (Fla. 1997).

COPIES FURNISHED:  
(via certified mail)

Ian Depagnier, Esquire  
Paul & Perkins, P.A.  
Suite 202  
711 North Orlando Avenue  
Maitland, Florida 32751  
(eServed)  
(Certified No. 7016 0910 0001 7987 8262)

Jason A. Paul, Esquire  
Paul & Perkins, P.A.  
Suite 202  
711 North Orlando Avenue  
Maitland, Florida 32751  
(Certified No. 7011 1570 0003 4461 5348)

Kenney Shipley, Executive Director  
Florida Birth Related Neurological  
Injury Compensation Association  
Suite 1  
2360 Christopher Place  
Tallahassee, Florida 32308  
(eServed)  
(Certified No. 7011 1570 0003 4461 5355)

Andrea L. Diederich, Esquire  
Marshall, Dennehey, Warner,  
Coleman & Goggin  
Suite 550  
315 East Robinson Street  
Orlando, Florida 32801  
(eServed)  
(Certified No. 7011 1570 0003 4461 5362)

Brooke M. Gaffney, Esquire  
Smith, Stout, Bigman & Brock, P.A.  
Suite 900  
444 Seabreeze Boulevard  
Daytona Beach, Florida 32118  
(eServed)  
(Certified No. 7011 1570 0003 4461 5379)

Amie Rice, Investigation Manager  
Consumer Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-75  
Tallahassee, Florida 32399-3275  
(Certified No. 7011 1570 0003 4461 5386)

Justin Senior, Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 1  
Tallahassee, Florida 32308  
(eServed)  
(Certified No. 7011 1570 0003 4461 5393)



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).