

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OLUWATOSIN OTIKI and AYODELE
JINADU, individually and as
natural parents and natural
guardians of ANGEL JINADU, a
minor,

Petitioners,

vs.

Case No. 18-2706N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

ORLANDO HEALTH, INC., d/b/a
WINNIE PALMER HOSPITAL FOR WOMEN
AND BABIES; AND MARTHA KUFFSKIE,
M.D.,

Intervenors.

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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 7, 2018.

STATEMENT OF THE CASE

On May 17, 2018, Petitioners, Oluwatosin Otiki and Ayodele Jinadu, on behalf of and as parents of, Angel Jinadu ("Angel"), 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 Louis Stern, M.D., as the physician who provided obstetric services at the birth of Angel on October 14, 2015, at Intervenor Orlando Health, Inc., d/b/a Winnie Palmer Hospital for Women and Babies ("Orlando Health Hospitals").

DOAH served Dr. Stern with a copy of the Petition on May 29, 2018, and served Orlando Health Hospitals that same date. NICA was also served with a copy of the Petition on May 29, 2018.

On July 20, 2018, Orlando Health Hospitals filed a Motion to Intervene, which was granted. In its motion, Orlando Health Hospitals identified Martha Kuffskie, M.D., as the physician at the time of labor prior to Angel's birth.

On August 22, 2018, NICA filed its response to the Petition, taking the position that Petitioners' claim was not compensable under the Plan. NICA requested that DOAH schedule a hearing to determine compensability.

On August 28, 2018, NICA filed a status report representing that no party requests a final hearing in this matter.

On September 7, 2018, NICA filed an Unopposed Motion for Summary Final Order, requesting the Administrative Law Judge enter

a summary final order finding that the claim was not compensable because Angel did not suffer a "birth-related neurological injury" as defined in section 766.302(2).

FINDINGS OF FACT

1. Angel was born on October 14, 2015, at Orlando Health Hospitals located in Orlando, Florida.

2. Based on the hospital records in evidence, Louis Stern, M.D., was the delivering physician for Angel's birth. Dr. Stern was not a "participating physician" under the Plan at the time Angel was born. See § 766.302(7), Fla. Stat. (Dr. Kuffskie was a "participating physician" for the year in which the injury occurred.)

3. Upon receiving the Petition, NICA retained Donald Willis, M.D., an obstetrician/gynecologist specializing in maternal-fetal medicine, as well as Laufey Y. Sigurdardottir, M.D., a pediatric neurologist, to review Angel's medical records. NICA sought to obtain an opinion whether there was an injury to Angel'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 Angel permanently and substantially mentally and physically impaired.

4. Dr. Willis reviewed Angel's medical records and opined, within a reasonable degree of medical probability:

[T]here was an apparent obstetrical event that resulted in oxygen deprivation or mechanical trauma during labor, delivery and the immediate post-delivery period. The oxygen deprivation resulted in brain injury.

5. Dr. Sigurdardottir also reviewed Angel's medical records, as well as examined Angel on August 1, 2018.

Dr. Sigurdardottir opined, within a reasonable degree of medical probability:

[A]lthough there is evidence of impairment consistent with a neurologic injury to the brain or spinal cord acquired due to oxygen deprivation or mechanical injury, Angel is not found to have substantial delays in motor abilities. Angel is found to have mild to moderate delays in mental abilities, with a language delay noted on her exam. She has made good progress with her developmental delays and prognosis for full motor and mental recovery is good.

6. A review of the file reveals no contrary evidence to dispute the findings and opinions of Dr. Willis and Dr. Sigurdardottir. Their opinions are credible and persuasive.

7. 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 Unopposed Motion for Summary Final Order asserting that Angel has not suffered a "birth-related neurological injury" as defined by section 766.302(2). Neither Petitioners nor Intervenor oppose NICA's motion.

CONCLUSIONS OF LAW

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

9. 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.

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, 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.

11. 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.

12. In this matter, however, NICA has determined that Petitioners' claim is not compensable under the Plan. Therefore,

NICA filed an Unopposed Motion for Summary Final Order, requesting an order be entered finding that the claim is not compensable.

13. 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).

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. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality.

15. "The [NICA] Statute is written in the conjunctive and can only be interpreted to require permanent *and substantial*

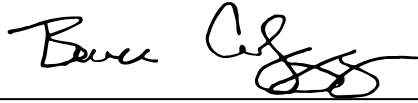
impairment that has *both physical and mental* elements.” (emphasis added). Fla. Birth-Related Neurological Injury Comp. Ass’n v. Fla. Div. of Admin. Hearings, 686 So. 2d 1349, 1356 (Fla. 1997).

16. The undisputed evidence establishes that Angel did not sustain a “birth-related neurological injury” as defined in section 766.302(2). Dr. Willis concluded that an apparent obstetrical event did occur to Angel that resulted in injury to her brain. However, Dr. Sigurdardottir opined that Angel is not currently suffering from substantial delays in her motor abilities, and she only experiences mild to moderate delays in her mental abilities. Dr. Sigurdardottir further commented that Angel “has made good progress with her developmental delays and prognosis for full motor and mental recovery is good.” Therefore, based on the evidence in the record, Angel has not suffered a “birth-related neurological injury” and is not eligible for NICA benefits.

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 16th day of October, 2018, in
Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
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Filed with the Clerk of the
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this 16th day of October, 2018.

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).