

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ERIC REYNOLDS and APRIL
REYNOLDS, o/b/o MARSHALL
REYNOLDS, a deceased minor,

Petitioners,

vs.

Case No. 18-3248N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

HOLMES REGIONAL MEDICAL CENTER,
INC.,

Intervenor.

_____ /

SUMMARY FINAL ORDER OF DISMISSAL

This case is before the administrative law judge to consider Respondent's Motion for Partial Summary Final Order (Motion), filed on October 15, 2018, by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA).^{1/} The Motion relies on the affidavit and report of Donald C. Willis, M.D., that opines that the infant, Marshall Reynolds (Marshall), did not suffer an injury during the course of labor, delivery, or resuscitation in the immediate postdelivery in the hospital. All

responses to the Motion have been filed, and the case is ripe for consideration.

STATEMENT OF THE CASE

On June 12, 2018, Petitioners filed a Petition, under Protest, 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 Billy Duke, M.D., as the physician who provided obstetrical services at Marshall's birth on June 9, 2016, at Holmes Regional Medical Center (Holmes Regional) in Melbourne, Florida.

On June 25, 2018, DOAH mailed a copy of the Petition to NICA, Dr. Duke, and Holmes Regional by certified mail. NICA was served with the Petition on or before June 28, 2018. The envelope addressed to Dr. Duke was returned as undeliverable, and on July 12, 2018, a second copy of the Petition was sent to Dr. Dukes by certified mail. Dr. Duke was served on or before July 16, 2018.

On August 10, 2018, Holmes Regional petitioned to intervene in the proceeding, and its request was granted by Order dated August 20, 2018. NICA asked for extensions of time to respond to the Petition, based upon the need to receive and review the medical records. Those requests were granted, and on October 15,

2018, NICA filed a Notice of Non-compensability and Request for Evidentiary Hearing on Compensability. At the same time, NICA filed its Motion for Partial Summary Final Order. Also filed was the opinion of Donald Willis, M.D., in support of the Motion. Petitioners have filed a response indicating that they do not object to the determination that the injury in this case is not compensable under the Plan. In their response, Petitioners state that they also filed a Motion for Summary Final Order on the issue of notice. However, no such motion appears on the docket. In any event, the determination that the injury is not compensable is dispositive.

While Petitioners filed a response stating that they did not object to the determination that the injury was not compensable, Intervenor asserted that it should have the opportunity to properly evaluate Dr. Willis's opinion regarding the nature of the injury suffered, and to present a factual and legal response to the opinion. Intervenor requested an extension of time to file its formal response until 20 days after its deposition of Dr. Willis was concluded. On November 13, 2018, Intervenor's request was granted in part, and Intervenor was given until January 2, 2019, to file a response. The deadline was later extended, over Petitioner's objection, to January 14, 2019.

On January 14, 2019, Intervenor filed its Response to Respondent's Motion for Partial Summary Final Order, stating that

it would not be presenting evidence or expert testimony in response to Respondent's motion, and did not require a hearing. This Summary Final Order of Dismissal is based upon the written submissions of the parties.

FINDINGS OF FACT

1. Marshall was born on June 9, 2016, at Holmes Regional. Marshall was a child born of a single gestation, weighing 2,736 grams.

2. NICA retained Donald Willis, M.D., an obstetrician specializing in maternal-fetal medicine, to review the medical records of Marshall and his mother, April Reynolds. Dr. Willis was asked to provide an opinion as to whether there was a brain or spinal cord injury to Marshall due to either oxygen deprivation or mechanical injury that occurred in the course of labor, delivery, or resuscitation in the immediate postdelivery period in the hospital.

3. Dr. Willis authored a report to NICA on or about September 24, 2018, which is incorporated into his affidavit dated October 12, 2018. In his report, Dr. Willis stated in part:

The mother, April Reynolds . . . presented at 38 weeks with a complaint of decreased fetal movement for several days. Blood pressure was elevated at 151/105 and a diagnosis of pregnancy induced hypertension was made. Pregnancy was felt to be uncomplicated prior to this complaint.

Fetal heart rate (FHR) monitor tracing was reviewed. The tracing begins about 2 hours prior to delivery. Baseline FHR was 145 bpm with decreased heart rate variability. The mother was not in labor. . . . A prolonged FHR deceleration to 60 bpm was described at about 20 minutes prior to delivery. Emergency Cesarean section delivery was done for fetal bradycardia.

Birth weight was 2,736 grams. The baby was severely depressed at birth. Apgar scores were 0/0/0. Resuscitation required intubation and chest compressions. A heart rate was obtained at 11 minutes after birth.

* * *

Complete newborn hospital records were not available. However, available records indicate the baby died about 6 hours after birth. Death certificate listed the cause of death as cardiorespiratory arrest and severe perinatal depression.

In summary, the mother presented with a several day history of decreased fetal movements. FHR tracing on admission showed decrease variability with terminal bradycardia. The mother was not in labor. Medical records are consistent with oxygen deprivation that occurred prior to delivery.

4. The parties have not submitted any evidence contrary to Dr. Willis's opinion, and his opinion is credited.

CONCLUSIONS OF LAW

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

6. The Plan was established by the Legislature "for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims" related to births occurring on or after January 1, 1989. § 766.303(1), Fla. Stat.

7. An injured infant, his or her 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. Section 766.305(4) provides that NICA, which administers the Plan, has 45 days from the date that a complete claim is served 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.

8. If NICA determines that the alleged injury is a birth-related neurological injury that is compensable under the Plan, it may award compensation to the claimant, provided that the award is approved by the assigned administrative law judge.

§ 766.305(7), Fla. Stat. However, if NICA disputes the claim, as it does in this case, the dispute must be resolved by the assigned administrative law judge in accordance with chapter 120, Florida Statutes. §§ 766.304, 766.30, and 766.31, Fla. Stat.

9. The first inquiry is whether the infant has sustained a birth-related neurological injury as defined by section 766.302(2), which provides:

"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.

10. If the administrative law judge determines that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury, and that as a result the infant was rendered permanently and substantially mentally and physically impaired, then section 766.309(1) provides that there is a rebuttable presumption that the injury is a birth-related neurological injury.

11. In this case, the evidence does not support such a presumption. The undisputed evidence presented indicates that there was not an injury to Marshall's brain or spinal cord that was caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period. The only evidence presented indicates that the oxygen deprivation occurred before the infant's mother presented to the hospital, at a time when she was not in labor. Based upon this evidence, Marshall did not sustain

a birth-related neurological injury as defined in section 766.302(2), and is not eligible for benefits under the Plan.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent's Motion for Partial Summary Final Order on the issue of a birth-related neurological injury is granted, and Petitioners' claim is found and determined not to be compensable. The Petition is dismissed with prejudice.

DONE AND ORDERED this 16th day of January, 2019, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of January, 2019.

ENDNOTE

^{1/} Respondent's Motion was styled as a Motion for Partial Summary Final Order. However, the determination that the claim is not compensable is dispositive, making this a Final Order subject to appeal under section 766.311, Florida Statutes.

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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).