

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

YANELA PENA AND CARLOS FRANCES  
RONDON-SILVA ON BEHALF OF AND AS  
PARENTS AND NATURAL GUARDIANS OF  
CAROLINE RONDON, A MINOR,

Petitioners,

vs.

Case No. 20-1346N

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

LAKE SHORE HMA, LLC D/B/A SHANDS  
LAKE SHORE REGIONAL MEDICAL  
CENTER,

Intervenor.

\_\_\_\_\_ /

SUMMARY FINAL ORDER

On December 28, 2020, Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), filed a Motion for Summary Final Order, asserting that Petitioners' child did not suffer a birth-related neurological injury as that term is defined in section 766.302(2), Florida Statutes. The Motion indicates that Petitioners do not object to the filing of the motion but makes no statement regarding the position taken by Intervenor. However, the time provided in Florida Administrative Code Rule 28-106.204 for filing a response has passed, and Intervenor has not filed any response. After review of the documents filed in this case, the motion is granted.

### STATEMENT OF THE ISSUE

The issue to be determined is whether Caroline Rondon, the child of Yanela Pena and Carlos Frances Rondon-Silva, suffered a birth-related neurological injury as that term is defined in section 766.302(2), compensable by the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

### PRELIMINARY STATEMENT

On March 4, 2020, Yanela Pena and Carlos Frances Rondon-Silva, on behalf of and as natural parents of Caroline Rondon, a minor (Caroline), filed a Petition for Benefits Filed Pursuant to Florida Statute Section 766.301 et seq. (Petition). The Petition identified Emad Atta, M.D., as the physician providing obstetrical services, and Shands Lake Shore Regional Medical Center (Shands Lake Shore) as the hospital where Caroline was born. NICA, Dr. Atta, and Shands Lake Shore were served with copies of the Petition by certified mail on March 17, 2020, and certified return receipts filed with the Division of Administrative Hearings indicate that all three received service.

On April 10, 2020, Shands Lake Shore petitioned to intervene in the proceedings, and intervention was granted by Order dated April 22, 2020. After receiving two extensions of time to respond to the Petition, on July 24, 2020, NICA filed a response asserting that the claim was not compensable and requesting an evidentiary hearing on the issue of compensability. Accordingly, on July 27, 2020, an Order was issued, directing the parties to provide mutually agreeable dates for conducting the hearing, as well as the preferred venue and an estimate for the length of time needed to conduct the hearing. Both Intervenor and Petitioners requested additional time to respond to the Order based on different but well-founded reasons, and on August 5, 2020, the requests for additional time were granted.

On November 2, 2020, NICA filed a Response to Scheduling Order, indicating that the parties remained uncertain as to whether a hearing would be necessary, but providing possible dates for scheduling a hearing, if required. On November 10, 2020, a Notice of Hearing by Zoom Conference was issued, scheduling the hearing for January 19, 2020. On December 28, 2020, NICA filed the instant Motion, to which Petitioners do not object, and Intervenor has filed nothing in opposition.

#### FINDINGS OF FACT

Based on a review of the Petition, the Motion for Summary Final Order, and the Exhibits attached thereto, the relevant facts for determination of this case are as follows:

1. Caroline was born on March 30, 2020, at Shands Lake Shore. She was a child born of single gestation and weighed 4,233 grams.

2. NICA retained Donald C. Willis, M.D., as a medical expert specializing in maternal-fetal medicine. NICA submitted his expert report dated April 21, 2020, with its Response to Petition for Benefits, and with the Motion for Summary Final Order. Dr. Willis concluded, based on his review of the medical records, that while the infant had some degree of oxygen deprivation at birth, there were no findings of HIE (hypoxic-ischemic encephalopathy) seen on an MRI, suggesting that the birth-related oxygen deprivation did not result in identifiable brain injury. He further opined that the MRI's findings of leukomalacia are more likely related to an event remote from birth.

3. NICA also retained Raj P. Sheth, M.D., as an expert in pediatric neurology. Dr. Sheth reviewed the records and examined Caroline. His report was also submitted as an exhibit to the Response to Petition for Benefits and the Motion for Summary Final Order. In that report, Dr. Sheth stated in part:

In SUMMARY, Caroline's neurological examination reveals ... delays mainly in personal social, and

language areas. She showed no spasticity and no increased tone. She was able to walk without toe walking. Her problems appear mainly in the area of personal social interaction with features that would be suggestive of autism. ...

Given the above findings would suggest that she complete her evaluation for autism which the mother reports is scheduled for August 2020. Further evaluation with genetic consultation may also be useful. Her findings do not suggest cerebral palsy as a diagnosis. She appears to have sensory integration difficulties, language difficulties and personal social interaction difficulties. As such she would not meet the criteria for persistent and significant neurologic injury as a result of mechanical or perinatal trauma to the brain or spinal cord.

4. The parties do not dispute the conclusions of Dr. Willis and Dr. Sheth.

5. Based on the evidence presented in support of the motion, Caroline is not eligible for compensation under the Plan because the evidence does not support a finding that she suffers from both mental and physical impairments, or that there is an identifiable brain injury related to labor, delivery, or resuscitation in the immediate postdelivery period.

#### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301–766.316, Fla. Stat.

7. The Plan was established by the Florida 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.

8. An injured child, his or her personal representative, parents, dependents, or next of kin may seek compensation under the Plan by filing a

claim for compensation with the Division of Administrative Hearings. §§ 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 a petition, and to submit relevant written information related to whether the alleged injury is a birth-related neurological injury. NICA has presented the required information in this case.

9. 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(s), 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 an administrative law judge in accordance with chapter 120, Florida Statutes. §§ 766.304, 766.30, and 766.31, Fla. Stat.

10. A birth-related neurological injury is defined by section 766.302(2), which provides:

(2) “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 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.

11. 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 a rebuttable presumption that the injury is a birth-related neurological injury.

12. In this case, there is no dispute among the parties that there was some oxygen deprivation at birth, but the evidence does not indicate that there is an identifiable brain injury as a result of that deprivation. There is also no dispute that while Caroline has some identifiable delays in personal, social, and language development, she is not permanently and substantially both mentally and physically impaired. Accordingly, the injury suffered by Caroline is not compensable under the Plan.

#### CONCLUSION

Based on the Findings of Fact and Conclusions of Law above, Petitioners' claim is not compensable under the Plan. Therefore, the hearing scheduled for January 19, 2021, is canceled, and the Petition is dismissed with prejudice.

DONE AND ORDERED this 14th day of January, 2021, in Tallahassee, Leon County, Florida.



---

LISA SHEARER NELSON  
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](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of January, 2021.

COPIES FURNISHED:  
(via certified mail)

Kenney Shipley, Executive Director  
Florida Birth-Related Neurological  
Injury Compensation Association  
Suite 1  
2360 Christopher Place  
Tallahassee, Florida 32308  
(eServed)  
(Certified Mail No. 7019 1640 0000 2306 2869)

Grant A. Kuvin, Esquire  
Morgan & Morgan  
Suite 1100  
76 South Laura Street  
Jacksonville, Florida 32202  
(eServed)  
(Certified Mail No. 7019 1640 0000 2306 2876)

Richard E. Ramsey, Esquire  
Wicker, Smith, O'Hara,  
McCoy and Ford, P.A.  
Suite 2700  
50 North Laura Street  
Jacksonville, Florida 32202  
(eServed)  
(Certified Mail No. 7019 1640 0000 2306 2883)

Tana D. Storey, Esquire  
Rutledge Ecenia, P.A.  
Suite 202  
119 South Monroe Street  
Tallahassee, Florida 32301  
(eServed)  
(Certified Mail No. 7019 1640 0000 2306 2890)

Amie Rice, Investigation Manager  
Consumer Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-75  
Tallahassee, Florida 32399-3275  
(Certified Mail No. 7019 1640 0000 2306 2906)

Shevaun L. Harris, Acting Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 1  
Tallahassee, Florida 32308  
(eServed)  
(Certified Mail No. 7019 1640 0000 2306 2913)

Emad Ismael Atta, M.D.  
4812 West Highway 90  
Lake City, Florida 32055  
(Certified Mail No. 7020 1290 0001 6309 8747)

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).