

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

QUANTAIR HUTCHINSON AND KAYLA
GAINES, AS PERSONAL REPRESENTATIVES
OF THE ESTATE OF JOEL HUTCHINSON,
DECEASED,

Petitioners,

vs.

Case No. 20-3838N

FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

RASIKLAL NAGDA, M.D.; AND NAGDA
MEDICAL, INC.,

Intervenors.

SUMMARY FINAL ORDER

On December 10, 2020, the Florida Birth-Related Neurological Injury Compensation Association (NICA) filed an Unopposed Motion for Summary Final Order, asserting that the injury suffered by Petitioners' child is not compensable. The Motion represents that Petitioners do not oppose the Motion, and the Intervenors take no position. After review of the Motion and the documents filed in support of the Motion, the Motion is granted.

STATEMENT OF THE ISSUE

The issue for determination is whether Joel Hutchinson (Joel), the minor child of Quantair Hutchinson and Kayla Gaines, has suffered a birth-related neurological injury as that term is defined in section 766.302(2), Florida

Statutes (2017), compensable by the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

PRELIMINARY STATEMENT

On August 21, 2020, Quantair Hutchinson and Kayla Gaines, as the parents and natural guardians and personal representatives of the Estate of Joel Hutchinson, filed an Amended Petition for Determination of Availability of NICA Coverage (the Petition). The Petition identified Rasiklal D. Nagda, M.D., as the physician providing obstetrical services, and Munroe Regional Medical Center as the hospital where Joel was born. Notice of the Petition was provided to NICA, Dr. Nagda, and Munroe Regional Medical Center by certified mail on August 28, 2020. The only return receipt received is from NICA; however, on October 15, 2020, Dr. Nagda and Nagda Medical, Inc., moved to intervene in the proceedings, and intervention was granted by Order dated October 21, 2020.

On October 14, 2020, NICA filed a Response to Petition for Benefits, in which it asserted that the injury was not a birth-related neurological injury and requested a hearing on compensability. On October 21, 2020, an Order was issued directing the parties to provide mutually acceptable dates for conducting a hearing; an estimate of how long the hearing would require; and the parties' preference on venue. On November 3, 2020, NICA filed a Status Report advising that Petitioners were not contesting the determination that the claim was not compensable, and the Intervenors were taking no position on the issue. NICA advised of its intention to file a Motion for Summary Final Order. Accordingly, on November 13, 2020, an Order was issued that required any Motion for Summary Final Order to be filed by December 11, 2020, and if none was filed, the case would be scheduled for hearing on a date available on the administrative law judge's calendar. NICA's Motion for Summary Final Order and supporting exhibit (which is Dr. Willis's affidavit,

with his CV and expert report attached) was filed December 10, 2020. Neither Petitioners nor Intervenors have filed a response.

FINDINGS OF FACT

Based on the allegations in the Petition and the expert report and affidavit filed as part of Exhibit A, the following facts are undisputed:

1. Kayla Gaines was approximately 38 weeks pregnant with her sixth child when she presented to Munroe Regional Medical Center for labor evaluation on January 3, 2018. According to Dr. Willis's report, at that time her cervix was not dilated, and she was only 30% effaced. Ms. Gaines was discharged with a diagnosis of false labor.

2. On January 5, 2018, Ms. Gaines returned to the hospital with severe abdominal pain, and at that time, no fetal heart rate could be identified by doppler or ultrasound. Her cervix remained unchanged from the visit two days before.

3. An emergency Cesarean section was performed because of the lack of a detected heartbeat for the infant. According to Dr. Willis's report, a uterine rupture had occurred, with the baby and placenta floating in the abdominal cavity.

4. Joel's birth weight was 3,405 grams. He was severely depressed at birth, with Apgar scores of 0/0/0/2. After resuscitative efforts including chest compression, intubation, epinephrine, and normal saline boluses, a very faint heart rate was obtained at 11 minutes after birth. Joel was transferred to Shands UF for evaluation and cooling protocol. However, Joel suffered multi-system organ failures, and his EEGs continued to show electrocerebral silence. A brain death evaluation was performed and a finding of brain death was made due to severe HIE (hypoxic-ischemic encephalopathy). As a result, Joel was removed from life support and passed away one week after birth. Dr. Willis's report states:

In summary, pregnancy was complicated by a uterine rupture with placental abruption. Apgar scores were 0/0/0/2 with a heart beat not obtained until 11 minutes after birth. Acidosis was prolonged despite resuscitative efforts. EEG showed electrocerebral silence, which did not improve after cooling protocol. MRI was consistent with global HIE. Brain death due to HIE was diagnosed and life support was withdrawn.

Was the mother in labor? Uterine rupture of a Cesarean section scar prior to the onset of labor is not common. The mother was having abdominal pain, which could be due to labor contractions, but abdominal pain and frequent contractions are also hallmarks of placental abruption.

Labor is defined as cervical change due to uterine contractions. Cervical exam just prior to delivery is closed and 30% effaced, which is unchanged compared to the exam two days prior. Therefore, it is my impression that the mother was not in labor at [the] time of uterine rupture and placental abruption.

No fetal heart beat was present when the mother arrived at the hospital, which is unchanged compared to the exam two days prior. Therefore, it is my impression that the mother was not in labor at time of uterine rupture and placental abruption.

No fetal heart rate was present when the mother arrived at the hospital, consistent with the brain injury occurring prior to birth.

The baby suffered oxygen deprivation and resulting brain injury severe enough to cause death. However, it appears the oxygen deprivation occurred prior to the onset of labor or delivery. The oxygen deprivation and brain injury did not occur during labor, delivery or the immediate post-delivery period.

5. Dr. Willis's affidavit adopts his report and opinion within a reasonable degree of medical probability. His affidavit and report are uncontroverted, and his opinion is accepted.

6. Based on the evidence presented in support of the Motion, Joel is not eligible for compensation under the Plan because the evidence does not indicate that his injury was suffered during labor, delivery, or the immediate post-delivery period.

CONCLUSIONS OF LAW

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

8. 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.

9. An injured child, his or her personal representative, parents, 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. Pursuant to section 766.305(4), 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.

10. 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 the procedures outlined in chapter 120, Florida Statutes. §§ 766.304, 766.30, and 766.31, Fla. Stat.

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

12. Generally, if the claimant demonstrates, and the administrative law judge finds, 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, and the claimant need not establish that the injury occurred during labor, delivery, or resuscitation in the immediate post-delivery period.

13. The presumption outlined in section 766.309(1) does not apply in this case. First, the presumption only comes into play when the claimant, as opposed to NICA or an intervenor, establishes that a brain or spinal cord injury occurred and that the infant sustained permanent and substantial mental and physical injuries. Here, NICA, as opposed to Petitioners, is moving for a summary final order. NICA is not entitled to the statutory presumption. *Bennett v. St. Vincent’s Med. Ctr., Inc.*, 71 So. 3d 828, 844 (Fla. 2011). Second, the presumption is a “bursting bubble” presumption, and disappears when there is credible, contrary evidence to rebut the

presumption. *Id.* at 846. Dr. Willis's report and affidavit, which are un rebutted, indicate that, more likely than not, the injury in this case occurred before labor, and his opinion has been credited. Accordingly, Joel did not have a birth-related neurological injury as that term is defined in section 766.302(2), and the injury he suffered is not compensable under the Plan.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law, Petitioners' claim is not compensable under the Plan, and the Amended Petition is dismissed with prejudice.

DONE AND ORDERED this 23rd day of December, 2020, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
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Filed with the Clerk of the
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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).