STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CRYSTAL WADDELL, as parent and natural guardian of CHELSEY DAVIS, a minor,	)	
Petitioner,	)	
vs.	)	Case No. 98-2991N
FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION,	)	
Respondent,	)	
and	)	
WILLIAM DAVIS,	)	
Intervenor.	)	

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by Administrative Law Judge, William J. Kendrick, held a formal hearing in the above-styled case on January 27, 1999, by video teleconference with sites at Tallahassee and Jacksonville, Florida.

APPEARANCES

For Petitioner: Merrill C. Tunsil, Esquire
Post Office Box 2113
Lake City, Florida 32056

For Respondent: W. Douglas Moody, Jr., Esquire
Graham & Moody, P.A.
101 North Gadsden Street
Tallahassee, Florida 32301

For Intervenor: I. Mark Rubin, Esquire
Rubin & Rubin, P.A.
2107 Hendricks Avenue, Suite 210
Jacksonville, Florida 32207

STATEMENT OF THE ISSUES

At issue in this proceeding is whether Respondent's proposal to accept the subject claim for compensation under the Florida Birth-Related Neurological Injury Compensation Plan should be approved and, if so, the amount and manner of payment (lump sum or periodic) of the parental award and the appropriate apportionment of the award between the parents.

PRELIMINARY STATEMENT

On June 9, 1998, Crystal Waddell, as the natural mother and guardian of Chelsey Davis (Chelsey), a minor, filed a claim with the Division of Administrative Hearings (hereinafter referred to as "DOAH") for compensation under the Florida Birth-Related Neurological Injury Compensation Plan (hereinafter referred to as the "Plan").

DOAH served the Florida Birth-Related Neurological Injury Compensation Association (hereinafter referred to as "NICA") with a copy of the claim on July 13, 1998.[1] NICA reviewed the claim and on September 24, 1998, gave notice that it "agrees that Chelsey Davis suffered a birth-related neurological injury as defined in Section 766.301(2), Florida Statutes," and that it was "prepared to provide medical benefits as provided by Section 766.31(1)(a) and [was] willing to offer the benefits as provided in Section 766.31(1)(b)."

On November 2, 1998, DOAH issued a notice of hearing advising the parties that an evidentiary hearing would be held on November 30, 1998, to resolve "[w]hether Respondent's acceptance of the claim should be approved, the amount and manner of payment (lump sum or periodic) of any parental award, any dispute regarding expenses previously incurred and any other dispute." At the request of Petitioner and Respondent, the hearing was rescheduled for January 27, 1999. The natural father, William Davis, received notice of the hearing and, at hearing, requested and was granted leave to intervene.

At hearing, the parties stipulated to the matters addressed in paragraphs 1 through 4 of the Findings of Fact. Moreover, the parties agreed that the administrative law judge would officially recognize and consider the medical records filed with DOAH on June 15, 1998; the report of Michael S. Duchowny, M.D., filed with DOAH on September 28, 1998; and the Stipulation filed with DOAH on December 22, 1998. Finally, Petitioner, Crystal Waddell, testified on her own behalf and called Cheryl Chieves as a witness. Intervenor, William Davis, testified on his own behalf and called Eric Blair as a witness. Intervenor's Exhibits A1 through A30, B, C, and F were received into evidence.[2]

The transcript of hearing was filed March 17, 1999, and the parties were initially accorded 10 days from that date to file proposed final orders; however, at Petitioner's request the deadline was extended to May 10, 1999. Petitioner and Intervenor

elected to file such a proposal and they have been duly-considered.

FINDINGS OF FACT

The claim for compensation

1. Petitioner, Crystal Waddell, and Intervenor, William Davis, are the natural parents of Chelsey Davis (Chelsey), a minor. Chelsey was born a live infant on August 23, 1997, at University Medical Center, a hospital located in Jacksonville, Florida, and her birth weight was in excess of 2500 grams. Ms. Waddell and Mr. Davis are not now, nor have they ever been, husband and wife.

2. The physician providing obstetrical services during the birth of Chelsey was Edward Illions, M.D., who was, at all times material hereto, a participating physician in the Florida Birth-Related Neurological Injury Compensation Plan (the Plan), as defined by Section 766.302(7), Florida Statutes.

3. Here, the parties agree that Chelsey suffered a "birth-related neurological injury" as defined by Section 766.302(2), Florida Statutes, in that she suffered an injury to the brain caused by oxygen deprivation in the course of labor, delivery, or resuscitation in the immediate post-delivery period in the hospital, which rendered her permanently and substantially, mentally and physically impaired. The medical records filed with DOAH on June 15, 1998, as well as the report of neurological evaluation by Michael S. Duchowny, M.D., filed with DOAH on

September 28, 1998, are consistent with the parties' agreement. Consequently, it is accepted that Chelsey suffered a "birth-related neurological injury," as defined by Section 766.302(2), Florida Statutes.

4. Given the compensability of the claim, NICA agreed as follows:

> 8. The Association agrees to pay $100,000.00 as follows:
> a) Ms. Crystal Waddell has requested that $6,000.00 be paid to Ms. Cheryl Chieves as reimbursement for funds which she has loaned Ms. Waddell. The Association has no objection to this payment. The Association and Ms. Waddell also request that the Administrative Law Judge schedule a hearing as soon as feasible to determine the entitlement of the mother and/or father, if any, to the parental award.
> b) The Association will pay all benefits, past and future, as authorized by Section 766.31, Florida Statutes. . . .
> c) The Association agrees that $3,753.25, which includes fees and expenses incurred in the representation of the Claimant in this case, will be paid to Merrill C. Tunsil, Esquire, the attorney for the claimant.

(Stipulation filed December 22, 1998.) Consequently, at the commencement of hearing, the parties stipulated that the only issues which remained for resolution were the apportionment of the $100,000.00 award between the parents, and whether such award should be made in lump sum or by periodic payment. (Transcript, page 8.)

Background

5. Chelsey's mother, Crystal Waddell (Ms. Waddell), was born May 30, 1979, and was 18 years of age when Chelsey was

born.[3] Chelsey, born August 23, 1997, was the product of Ms. Waddell's first pregnancy.

6. According to the proof, Ms. Waddell's formal education ceased following her completion of the 11th grade. Thereafter, she was employed by Arby's and, subsequently, by McDonald's in the years preceding Chelsey's birth. Following Chelsey's birth, Ms. Waddell, with the assistance of her mother, dedicated herself to Chelsey's care; however, recently, Ms. Waddell resumed her formal education, with the aim of completing her high school education.

7. Chelsey's father, William Davis (Mr. Davis), was born March 31, 1980, and was 17 years of age when Chelsey was born. At the time, Chelsey was the second child Mr. Davis had fathered without the benefit of marriage.

8. According to the proof, Mr. Davis abandoned his formal education during the 8th grade and, since that time, has been periodically employed in various unskilled positions. Such employment has included a term at McDonald's (where he and Ms. Waddell met); a period of approximately 6 weeks at John Rigsby Painting Company, Raleigh, North Carolina, at and shortly after Chelsey's birth; a term at Top Choice Poultry, following Chelsey's birth and his return to Jacksonville, Florida; and, most recently (since approximately September 1998), employment by Bill Williams Heating and Air Conditioning, where he nets approximately $180.00 each week. As of the date of hearing,

Mr. Davis announced that he had recently (that week) started a program designed to achieve his GED and, if successful, hoped to begin an apprenticeship program with his current employer. The nature of Mr. Davis' current employment or the apprenticeship program is not of record.

9. Approximately one year preceding Chelsey's birth, Ms. Waddell and Mr. Davis met while employed at a McDonald's restaurant in Jacksonville, Florida. Apparently, their relationship blossomed and, based on a perceived foundation of love and devotion, they designed to have a child and Chelsey was conceived.

10. While Ms. Waddell and Mr. Davis may have initially felt a sense of purpose or closeness, their relationship proved to be tempestuous. Moreover, while they initially professed commitment and sought parenthood, the couple was never capable of sustaining themselves, much less an infant. Indeed, throughout the course of their relationship, and to this date, Ms. Waddell has continued to reside with her mother, Cheryl Chieves (Ms. Chieves).

11. As Ms. Waddell's delivery date neared, Mr. Davis, who was apparently unemployed at the time, elected to go to Raleigh, North Carolina. According to Mr. Davis, the reason for the trip was two-fold. One reason was to visit his son (the issue of a previous relationship). The other reason was "I had a job waiting there to get some money up, you know." (Transcript,

page 131.) As for the duration of the trip, the record reflects that Mr. Davis remained in Raleigh for 3 months, returning at the end of November 1997 when Chelsey was 3 months old. As for the promised job, the proof reflects that Mr. Davis was employed by John Rigsby Painting Company for the first 6 weeks of his stay in Raleigh, but was otherwise unemployed.

12. At or about 10:54 p.m., August 22, 1997, Ms. Waddell was admitted to University Medical Center in labor, and at 12:30 a.m., August 23, 1997, her membranes spontaneously ruptures, with clear fluid noted. Ms. Waddell's labor and delivery was noted in her discharge summary as follows:

> The patient was admitted to Labor and Delivery . . . with a term intrauterine pregnancy and spontaneous rupture of membranes. The patient's cervix at the time of admission was 6, complete, -3 and vertex presentation. The patient had a protracted, active phase, and was started on Pitocin augmentation. At 7 centimeters, the patient had an intrauterine pressure catheter which showed an adequate contraction pattern x one hour. Her fetal heart tracing showed some subtle decelerations . . . . Later on that day, the patient developed a temperature to 101.2 degrees and she was diagnosed with chorioamnionitis and started on clindamycin and gentamicin. The patient was allergic to penicillin. She continued to make no progress with her cervical examination.
>
> A scalp pH was performed [at 6:50 p.m.] and came back 7.29 which showed reassurance. The patient was continued with Pitocin augmentation. A repeat scalp pH [performed at 11:10 p.m.] was 7.05 and [at 11:20 p.m. was] 6.86 [consistent with metabolic acidosis], so the patient was taken to the operating room for a stat cesarean section [and the infant was delivered at 11:36

> p.m.]. . . . Apgars were 3 at one minute, 5 at five minutes and 6 at 10 minutes. Findings at the time of surgery showed a live born baby with a terminal meconium. Postoperatively, the baby was taken to the Neonatal Intensive Care Unit. . . .

13. Ms. Waddell was discharged August 30, 1997, and Chelsey was ultimately discharged to the care of her mother on September 12, 1997. Chelsey's course was noted in her discharge summary as follows:

> HISTORY OF PRESENT ILLNESS: This 3075 gram female infant was born by cesarean section at 38 weeks gestation for decreased fetal heart rate and a scalp pH of 6.8. . . . Rupture of membranes was approximately 18 hours prior to delivery. There was a history of maternal fever and the mother received Clindamycin and Gentamicin. The amniotic fluid was meconium stained and 0.5 cc of thick meconium stained fluid was suctioned from below the cords. Apgars were 3 at one minute, 5 at five minutes and 6 at ten minutes, after receiving positive pressure ventilation and then blow-by oxygen. The infant was transported to the neonatal intensive care unit.
>
> PHYSICAL EXAMINATION: . . . Neurological examination showed decreased tone with symmetrical movement and no focal neurological deficits.
>
> ADMISSION LABORATORY DATA: The infant is A+ and Coomb's positive. Arterial blood gas on 100% blow-by oxygen revealed a pH of 7.08, pC02 of 18, p02 of 479 and a base excess of -23.
>
> ADMISSION DIAGNOSES:
> 1. Term female.
> 2. Respiratory depression.
> 3. Metabolic acidosis.
> 4. ABO incapability.
> 5. Sepsis surveillance.

HOSPITAL COURSE AND PROBLEM LIST:

* * *

Respiratory: Initially she had metabolic acidosis and received sodium bicarbonate. A chest x-ray was consistent with retained fetal lung fluid and she was placed on nasal cannula. Initially she had tachypnea which slowly resolved. The nasal cannula was discontinued on day three and she had no further respiratory distress and required no further oxygen. This problem is considered resolved.

* * *

Central Nervous System: On August 24, 1997 she developed seizure activity at less than 12 hours of age. She was placed on Phenobarbital. An electroencephalogram (EEG) showed "status", although clinically no seizures were noted after the initial episode of seizure activity. . . . Neurology was consulted and she was seen by Dr. Shanks whose impression was acute encephalopathy and recurrent electrographic seizures from multiple-foci despite Phenobarbital therapy. . . . [P]henobarbital was given until maximal serum levels were achieved. She was then started on Dilantin. A head ultrasound on August 25, 1997 was normal. A CT scan on August 26, 1997 showed extensive cerebral low attenuation suggesting anoxic injury. Phenobarbital and Dilantin levels were followed closely and doses were adjusted appropriately. Follow up electroencephalogram (EEG) on September 2, 1997 showed no electrographic seizures and marked suppression except for bursts of excessive sharp waves. The Dilantin was discontinued. No change in the neurological status was noted. Plan: Discharge home on Phenobarbital 12 mg.b.i.d. and follow up Phenobarbital level two weeks after discharge. . . .

* * *

> Discharge Physical Examination: . . .
> Neurological examination shows symmetrical decreased tone, otherwise no gross neurological deficits were noted.
>
> DISCHARGE DIAGNOSES:
> 1. Term female, 38 weeks gestation.
> 2. Neonatal asphyxia, resolved.
> 3. Neonatal seizures
> 4. ABO incompatibility with hemolysis.
> 5. Metabolic acidosis, resolved.
> 6. Anemia.
> 7. Hyponatremia, resolved.
> 8. Hypoxic ischemic encephalopathy. . . .

14. Since her discharge, Chelsey has been cared for by Ms. Waddell and her mother (Ms. Chieves), initially in an apartment leased by Ms. Chieves and more recently in a single family residence purchased by Ms. Chieves. Ms. Waddell and Ms. Chieves have jointly shared the responsibility for Chelsey's care and, apart from Aid For Dependent Children (AFDC), which Ms. Waddell started to receive at or about three months after Chelsey's birth, and Medicaid assistance, all financial support for the family has been provided by Ms. Chieves.[4] More recently, Ms. Chieves has added her daughter and Chelsey as dependents to her health insurance coverage, which she enjoys as an employee of the State of Florida.

15. The attendant responsibilities and sacrifices inherently associated with Chelsey's daily care may be gleaned from Dr. Michael Duchowny's report of neurological evaluation of August 18, 1998, as follows:

> HISTORY ACCORDING TO CHELSEY'S FAMILY:
> Chelsey is an almost 1 year old . . . female who "has cerebral palsy and is legally

blind". Ms. Waddell began by explaining that Chelsey has severe motor delay and has essentially made no progress past the newborn level.

Chelsey is unable to roll over or sit on her own and requires almost constant feeding. She had an indwelling gastrostomy for the first few months of life, but is now able to mouth and swallow on her own. Still, Chelsey's oromotor problems limit her caloric intake. She is quite small for her age and now weighs only 15 pounds, 14 ounces with a length of 27 inches. Ms. Waddell feels that Chelsey's motor problems effect [sic] all extremities.

Chelsey is also "legally blind". By that, her mother indicated that Chelsey is unable to understand what she sees and therefore has little visual information. She can respond to her mother's voice and apparently is hyper alert. She sleeps through the night.

Chelsey also suffers from recurrent seizures. These apparently are a marked problem and Chelsey has between 10 and 20 brief tonic seizures per day. Her head and eyes tend to be deviated to the right side with stiffening of the upper extremities. She takes phenobarbital 8 cc b.i.d. and is under the care of Dr. Daniel Shanks in Jacksonville.

Chelsey receives physical therapy on a once weekly basis and speech therapy twice weekly. Occupational therapy is administered on one occasion every 2 weeks. . . .

* * *

NEUROLOGIC EXAMINATION reveals an infant who lies supine with fixed postures in a right tonic neck response. Chelsey demonstrates a startle myoclonus. She has intermittent tongue thrusting movements. There is no drooling. The head is deviated to the right side, but can be passively rotated to the left. There is no central gaze fixation. Chelsey does have brief limited conjugate following. The funduscopic examination is

> unremarkable. Motor examination reveals increased tone in all extremities indicative of a spastic hemiparesis. The tonic neck response is obligate and can be obtained in both directions through passive movement of the head. There is a positive jaw jerk, sucking and snouting responses. The limbs are small with diminished muscle bulk. Fisting of the thumbs is noted bilaterally. There is evidence of guided reaching. The deep tendon reflexes are brisk at 3+ in all extremities with crossed adductor responses. There are florid bilateral Babinski responses with the large toes being held in passive Babinski attitudes. Sustained ankle and knee clonus are easily elicited. The jaw jerk and facial jerks are both hyperactive. The spine shows a slight curvature convex to the right. The neurovascular examination is unremarkable.
>
> In SUMMARY, Chelsey's neurologic examination reveals evidence of severe motor and cognitive delay. Chelsey is showing little progress past the newborn period and her microcephaly suggests that there has been little brain growth since birth. At the same time, Chelsey manifests cortical blindness and startle myoclonus. Chelsey additionally has medically resistant seizures of probable left frontal lobe origin. . . .

16. As heretofore noted, Mr. Davis did not return to Jacksonville, or visit his daughter, until Chelsey was 3 months of age. Thereafter, apart from the first week he was in town and resided with Ms. Waddell and Ms. Chieves, Mr. Davis has lived apart from his daughter and Ms. Waddell, and his participation in his daughter's care, as well as any contribution to his daughter's support, has been de minimus.[5] Mr. Davis' interest in Chelsey was stated by him at hearing to be as follows:

> Q. . . . You're not telling this Court that you want custody of this baby and that you're capable of taking care of it; are you?
>
> A. No, sir. I just want it where I can see her when I want to and I ain't got to go through so much trouble, you know, just to see her.

Apportionment and manner of payment (lump sum or periodic payment) of the parental award

17. As the primary caretaker for Chelsey, the demands placed on Ms. Waddell as the custodial parent, are, and will continue to be onerous. Clearly, without the support of her mother, the demands placed on Ms. Waddell for Chelsey's care would have left her little or no time for other activities or pursuits, and those demands greatly exceed, and will continue to exceed, those assumed by the parent of an infant not so impaired. In contrast, Mr. Davis has accepted none of the responsibilities (financial or otherwise) associated with Chelsey's care, and has evidenced no sincere inclination to do so.

18. Under the circumstances, it is apparent that, as between them, the loss suffered by Ms. Waddell as a consequence of Chelsey's injury has been grossly disproportionate to that suffered by Mr. Davis, and that such disparity warrants a similar distinction, as between them, in the apportionment of the parental award.

19. As for the method of payment, lump sum or periodic, it should not be subject to serious debate that Ms. Waddell and Mr. Davis have evidenced poor judgment in the past, and that,

given their positions in life and young ages, they cannot be relied upon to make sound decisions in the immediate future. Consequently, except for the lump sums hereafter awarded, it is resolved that, absent further order, the bulk of the parental award should be paid periodically to the custodial parent.

20. Given the foregoing considerations, as well as the legal principles discussed infra, it is resolved that of an award of $100,000, Ms. Waddell and Mr. Davis are each eligible to receive $2,500 in lump sum, and that the balance of $95,000 be paid to the custodial parent, retroactive to August 23, 1997, at the rate of $500 per month. Ms. Waddell, as the current and past custodial parent, shall receive the retroactive payment in lump sum and, absent a change in the custodial arrangement, the sum of $500 each month thereafter absent further order or until the principle is exhausted.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. Section 766.301, et seq., Florida Statutes.

22. The Florida Birth-Related Neurological Injury Compensation Plan (the "Plan") was established by the Legislature "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. Section 766.303(1), Florida Statutes.

23. The injured "infant, his personal representative, parents, dependents, and next of kin," may seek compensation under the Plan by filing a claim for compensation with the Division of Administrative Hearings within five years of the infant's birth. Sections 766.302(3), 766.303(2), 766.305(1), and 766.313, Florida Statutes. The Florida Birth-Related Neurological Injury Compensation Association (NICA), which administers the Plan, 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." Section 766.305(3), Florida Statutes.

24. If NICA determines that the injury alleged in a claim is a compensable birth-related neurological injury, as it has in this case, 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. Section 766.305(6), Florida Statutes. Here, the parties have stipulated that the attending physician who provided obstetric services during the birth of Chelsey was a "participating physician" as that term is defined by Section 766.302(7), Florida Statutes, and as that term is used in Sections 766.301 through 766.316, Florida Statutes, and that Chelsey suffered a "birth-related neurological injury," within the meaning of Section 766.302(2), Florida Statutes. Such stipulation is consistent with the medical records and other

documents filed in support of the claim for compensation and officially recognized. Under such circumstances, NICA's determination that the claim is compensable is approved. Section 766.305(6), Florida Statutes.

25. Where, as here, it has been found that "the infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth," the administrative law judge is required to make a determination as to "how much compensation, if any, is awardable pursuant to s. 766.31." Section 766.309(1)(c), Florida Statutes. Included among the "items relative to such injury" for which the administrative law judge "shall make an award providing compensation," are:

> Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award shall not exceed $100,000. However, at the discretion of the administrative law judge, such award may be made in lump sum.

Section 766.31(1)(b), Florida Statutes .

26. The foregoing provision offers no guidance as to what factors should be considered in resolving how the amount of any "award" to the parents should be derived. Accordingly, it is presumed that the Legislature intended that the derivation of any such award be premised on the same factors that support an award at common law. Vanner v. Goldshein, 216 So. 2d 759, 760 (Fla. 2d DCA 1968)("The general rule is that statutes are to be construed

with reference to appropriate principles of the common law, and when possible they should be so construed as to make them harmonize with existing law and not conflict with long settled principles."), and Carlile v. Game and Fresh Water Fish Commission, 354 So. 2d 362 (Fla. 1977)(A statute designed to change the common law rule must speak in clear, unequivocal terms, for the presumption is that no change in the common law was intended unless the statute is explicit in this regard.)

27. Pertinent to this case, the parents of a child who has suffered a significant injury resulting in the child's permanent total disability had, at common law, a right to recover indirect economic losses such as income lost by the parent in caring for the child and for the permanent loss of filial consortium suffered as a result of the injury. United States of America v. Dempsey, 635 So. 2d 961 (Fla. 1994), and Wilkie v. Roberts, 91 Fla. 1064, 109 So. 225 (1926). In this context, "consortium" has been defined "to include the loss of companionship, society, love, affection, and solace of the injured child, as well as ordinary day-to-day services that the child would have rendered." United States of America v. Dempsey, supra, at 965.

28. Given that the foregoing factors are the premise upon which the award of $100,000 must rest, so must those factors be balanced, relative to the impact the child's injury has had on the respective interests of the parents, in apportioning the award between the parents. So considered, a significant

difference is apparent between the loss suffered by Ms. Waddell, as the custodial parent, and Mr. Davis, as the non-custodial parent, including: Ms. Waddell's lost opportunity in caring for Chelsey, as compared to Mr. Davis' lack of lost opportunity; and, Ms. Waddell's daily loss of Chelsey's companionship, society, love, affection, and solace, as well as ordinary day-to-day services Chelsey would have rendered had her maturation been age appropriate, as compared to Mr. Davis' periodic loss of consortium. Under such circumstances, the proof demonstrates that of an award of $100,000, Ms. Waddell and Mr. Davis are each eligible for an award of $2,500 in lump sum, and that the balance of $95,000 should be paid periodically to the custodial parent, retroactive to August 23, 1997, at the rate of $500 per month. Ms. Waddell, as the current and past custodial parent, shall receive the retroactive payment in lump sum and, absent a change in the custodial arrangement, the sum of $500 each month thereafter absent further order or until the principal is exhausted.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. The claim for compensation filed by Crystal Waddell, as parent and natural guardian of Chelsey Davis, a minor, and NICA's

acceptance of that claim for compensation be and the same is hereby approved.

2. NICA shall make immediate payment of all actual expenses as defined by Section 766.31(1)(a), Florida Statutes, previously incurred and shall make payment for future expenses as incurred.

3. The stipulation dated December 18, 1998, and filed December 22, 1998, is approved. Consistent with such stipulation NICA shall pay to Merrill C. Tunsil, Esquire, the sum of $3,753.25, as reasonable expenses incurred in connection with the filing of the claim for compensation.

4. Petitioner, Crystal Waddell, and Intervenor, William Davis, are entitled to a parental award of $100,000. Of that sum, Ms. Waddell and Mr. Davis shall each receive in lump sum $2,500. The remaining balance of $95,000 shall be paid periodically to the custodial parent, retroactive to August 23, 1997, at the rate of $500 per month. Ms. Waddell, as the current and past custodial parent, shall receive the retroactive payment in lump sum and, absent a change in the custodial arrangement, the sum of $500 each month thereafter absent further order or until the principle is exhausted. Of the total lump sum to be paid to Ms. Waddell, NICA shall deduct and pay, pursuant to the parties' stipulation, the sum of $6,000 to Ms. Cheryl Chieves.

5. Pursuant to Section 766.312, Florida Statutes, jurisdiction is reserved to resolve any disputes, should they

arise, regarding the parties' compliance with the terms of this final order.

DONE AND ORDERED this 11th day of May, 1999, in Tallahassee, Leon County, Florida.

WILLIAM J. KENDRICK
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of May, 1999.

ENDNOTES

1/ The delay in service of the claim on NICA was occasioned by Petitioner's failure to tender the filing fee with the claim. The filing fee was received July 10, 1998, and the claim was served July 13, 1998.

2/ Intervenor's Exhibits D, E1, and E2 were not moved into evidence.

3/ The transcript of hearing reflects that Ms. Waddell's date of birth was May 30, 1978; however, all medical records record her date of birth as May 30, 1979. Here, the date recorded in the medical records has been accepted.

4/ Depending on who one chooses to credit, Mr. Davis has contributed cash and personal items (i.e., disposable diapers) for Chelsey's care since birth valued at $236 (if one credits Ms. Waddell's testimony) or $700 (if one credits Mr. Davis' testimony). Here, Ms. Waddell's testimony is credited; however, whether $236 (a sum equivalent to approximately $14.00 a month or $3.00 a week) or $700 (a sum equivalent to approximately $41.00 a month or $10.00 a week) Mr. Davis' financial contribution has been de minimus.

5/ In so concluding, neither the proof offered on behalf of Mr. Davis, nor the proposed final order submitted on Mr. Davis' behalf has been overlooked; however, the more credible or persuasive proof compels the conclusion that Mr. Davis' participation in his daughter's care, as well as any contribution he has made to his daughter's support, has been de minimus. In this regard, it is observed that Mr. Davis' participation in Ms. Waddell's prenatal course was nominal at best, and his participation post-delivery could not be described as "substantial," as Intervenor would choose to describe it. (Intervenor's Findings of Fact and Conclusions of Law, paragraph 12.) Moreover, it cannot be said, as Intervenor suggests (at paragraph 13 of Intervenor's Findings of Fact and Conclusions of Law), that Mr. Davis "has shown his love for Chelsey by his repeated attempts to be with, care for, and beg for time with her." Rather, Mr. Davis' absence from Florida until Chelsey was 3 months old, as well as his lack of personal or financial contribution toward her care since his return (as noted in Endnote 4, supra), speak volumes, and provide objective and compelling evidence that Mr. Davis harbors no significant commitment toward Ms. Waddell or Chelsey.

COPIES FURNISHED:
(By certified mail)

Merrill C. Tunsil, Esquire
Post Office Box 2113
Lake City, Florida 32056

I. Mark Rubin, Esquire
Rubin & Rubin, P.A.
2107 Hendricks Avenue, Suite 210
Jacksonville, Florida 32207

W. Douglas Moody, Jr., Esquire
Graham & Moody, P.A.
101 North Gadsden Street
Tallahassee, Florida 32301

Lynn Dickinson, Executive Director
Florida Birth-Related Neurological
Injury Compensation Association
Post Office Box 14567
Tallahassee, Florida 32317-4567

Edward Illions, M.D.
653-1 West Eighth Street
Jacksonville, Florida 32209

University Medical Center
Legal Department
655 West Eighth Street
Jacksonville, Florida 32209

Ms. Charlene Willoughby
Agency for Health Care Administration
Consumer Services Unit
Post Office Box 14000
Tallahassee, Florida 32308

Daniel Y. Sumner, General Counsel
Department of Insurance
The Capitol, Lower Level 26
Tallahassee, Florida 32399-0300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to Sections 120.68 and 766.311, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the appropriate District Court of Appeal. See Section 120.68(2), Florida Statutes, and Florida Birth-Related Neurological Injury Compensation Association v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992). The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.