

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDWARD LeCRENIER and RENEE LeCRENIER,)
as parents and natural guardians of)
ALEXANDRIA LeCRENIER, a minor,)
)
Petitioners,)
)
vs.) Case No. 00-1169N
)
FLORIDA BIRTH-RELATED NEUROLOGICAL)
INJURY COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
MICHELLE McLANAHAN, M.D. and WOMEN'S)
MEDICAL GROUP, P.A.,)
)
Intervenors.)
_____)

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings,
by Administrative Law Judge William J. Kendrick, held a hearing
in the above-styled case on May 25, 2001, by telephone.

APPEARANCES

For Petitioner: Ronald S. Gilbert, Esquire
Morgan, Colling & Gilbert, P.A.
20 North Orange Avenue, Suite 1600
Post Office Box 4979
Orlando, Florida 32802-4979

For Respondent: B. Forest Hamilton, Esquire
Florida Birth-Related Neurological Injury
Compensation Association
1435 Piedmont Drive, East, Suite 102
Post Office Box 14567
Tallahassee, Florida 32312

STATEMENT OF THE ISSUE

To be resolved are any existing disputes regarding actual expenses, the amount and manner of payment of an award to the legal guardian, and the reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees.

PRELIMINARY STATEMENT

By Final Order rendered March 15, 2001, it was resolved that Alexandria LeCrenier (Alexandria), a minor, was a covered infant under the provisions of Section 766.301 et seq., Florida Statutes, the "Florida Birth-Related Neurological Injury Compensation Plan" (the Plan). Consequently, it was ordered that:

1. The claim for compensation filed by Renee LeCrenier, the maternal grandmother and legal guardian of Alexandria LeCrenier, be and the same is hereby approved.
2. NICA shall make immediate payment of all expenses previously incurred, and shall make payment for future expenses as incurred.
3. The parties are accorded 30 days from the date of this order to resolve, subject to the approval of the administrative law judge, any existing dispute regarding actual expenses, the amount and manner of payment of an award

to the parents or legal guardians, and the reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees. If not resolved within such period, the parties will so advise the administrative law judge, and a hearing will be scheduled to resolve such issues

Following entry of the Final Order, the parties requested that a hearing be held to resolve any disputes regarding actual expenses, the amount and manner of payment of an award to the legal guardian, and the reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees. Such a hearing was duly-noticed and held on May 25, 2001.

At hearing, Petitioner and Respondent stipulated to the matters set forth in paragraphs 1 and 2 of the Findings of Fact and, post-hearing, stipulated to the matters set forth in paragraph 3 of the Findings of Fact. No witnesses were called and no other evidence was offered.

FINDINGS OF FACT

1. With regard to expenses previously incurred, the parties are unaware of any existing dispute regarding any such expenses; however, consistent with Section 766.31(1)(a), Florida Statutes, NICA agrees to pay all actual expenses previously incurred that may remain unpaid, as well as future expenses as incurred.

2. With regard to an award to the legal guardian and primary custodian, Renee LeCrenier, the parties are in agreement that an award of \$100,000 is appropriate, and that the award be paid at the rate of \$1,000 a month retroactive to Alexandria's birth. The parties also agree that the award shall be used to offset transportation expenses, living expenses, and other expenses not covered under Section 766.31(1)(a), Florida Statutes. Finally, the parties agree that absent a change in the custodial arrangement or further order of the administrative law judge that this award shall continue to be paid to Renee LeCrenier at the rate of \$1,000 per month until the full award of \$100,000 has been paid.

3. With regard to an award for reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees, the parties have agreed that NICA will pay and Petitioner shall accept the sum of \$10,000 for attorney's fees and \$1,500 for costs, as the reasonable expenses incurred in connection with the filing of the claim.

4. The parties' agreement with regard to actual expenses, the amount and manner of payment of an award to the legal guardian, and the amount to be paid in connection with the filing of the claim is reasonable, and is approved.

CONCLUSIONS OF LAW

5. 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.

6. Pertinent to this case, Section 766.31(1), Florida Statutes, provides that where, as here, a claim for compensation has been approved, the claimant is entitled to an award providing compensation for "actual expenses," an award to the legal guardian not to exceed \$100,000, and an award for reasonable expenses incurred in connection with the filing of the claim.

7. Here, the parties have stipulated to such award, as heretofore noted in the Findings of Fact, and the parties' agreement has been approved.

CONCLUSION

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

ORDERED that:

1. NICA shall make immediate payment of all actual expenses, as defined by Section 766.31(1)(a), Florida Statutes, previously incurred and not paid, and shall make payment for future expenses as incurred.

2. Pursuant to Section 766.31(1)(b), Florida Statutes, an award of \$100,000 is made. Such award shall be paid periodically at the rate of \$1,000 per month to Alexandria's legal guardian,

Renee LeCrenier, retroactive to Alexandria's birth, and shall be used to offset transportation expenses, living expenses, and other expenses not otherwise covered under Section 766.31(1)(a), Florida Statutes. Absent a change in the custodial arrangement or further order of the administrative law judge, the award shall continue to be paid to Renee LeCrenier at the rate of \$1,000 per month until the full award of \$100,000 has been paid.

3. Pursuant to Section 766.31(1)(c), Florida Statutes, Petitioner is awarded \$11,500, as reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees.

DONE AND ORDERED this 15th day of June, 2001, in Tallahassee, Leon County, Florida.

WILLIAM J. KENDRICK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of June, 2001.

COPIES FURNISHED:

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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.