

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DAJUANDA ALEXANDER, )  
individually and as parent and )  
natural guardian of ELLIOTT L. )  
DAVIS, III, a minor, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 02-2214N  
 )  
FLORIDA BIRTH-RELATED )  
NEUROLOGICAL INJURY )  
COMPENSATION ASSOCIATION, )  
 )  
Respondent, )  
 )  
and )  
 )  
ORLANDO REGIONAL HEALTHCARE )  
SYSTEM INC., d/b/a ARNOLD )  
PALMER HOSPITAL FOR CHILDREN )  
AND WOMEN, and JEROME L. ADAMS, )  
M.D. and JEROME L. ADAMS, M.D., )  
P.A., )  
 )  
Intervenors. )  
\_\_\_\_\_ )

AWARD AND 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 June 21, 2004, by video teleconference, with sites in Tallahassee and Orlando, Florida.

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: Lynn Walker Wright, Esquire  
2716 Rew Circle, Suite 102  
Ocoee, Florida 34761

For Intervenor Orlando Regional Healthcare System, Inc.,  
d/b/a Arnold Palmer Hospital for Children and Women:

Richard L. Allen, Jr., Esquire  
Mateer & Harbert, P.A.  
108 East Central Boulevard  
Post Office Box 2854  
Orlando, Florida 32802-2854

For Intervenors Jerome L. Adams, M.D.,  
and Jerome L. Adams, M.D., P.A.:

Ruth C. Osborne, Esquire  
McEwan, Martinez & Dukes, P.A.  
Post Office Box 753  
Orlando, Florida 32802-0753

STATEMENT OF THE ISSUES

At issue is the amount and manner of payment of the parental award, the amount owing for attorney's fees and costs incurred in pursuing the claim, and the amount owing for past expenses.

PRELIMINARY STATEMENT

On February 11, 2004, an Order on Compensability and Notice was entered in the above-styled case which resolved that the claim was compensable and that, with regard to the participating

physician, the notice provisions of the Florida Birth-Related Neurological Plan (Plan) were satisfied, but with regard to the hospital, they were not. Pertinent to this proceeding, the Order concluded:

Where, as here, the administrative law judge determines that the infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth, he is required to make a determination as to how much compensation, if any, should be awarded. § 766.31, Fla. Stat.<sup>[1]</sup> In this case, the issues of compensability and the amount of compensation to be awarded were bifurcated. Accordingly, absent agreement by the parties, and subject to the approval of the administrative law judge, a hearing will be necessary to resolve any disputes regarding the amount and manner of payment of "an award to the parents or legal guardians of the infant," the "[r]easonable expenses incurred in connection with the filing of . . . [the] claim . . . including reasonable attorney's fees," and the amount owing for "expenses previously incurred." § 766.31(1), Fla. Stat.

Consequently, it was ordered that:

. . .the parties are accorded 30 days from the date of this order to resolve, subject to approval by the administrative law judge, the amount and manner of payment of an award to the parents or legal guardians, the reasonable expenses incurred in connection with the filing of the claim, including reasonable attorney's fees, and the amount owing for expenses previously incurred. If not resolved within such period, the parties shall so advise the administrative law judge, and a hearing will be scheduled to resolve such issues. Once resolved, a final

award will be entered consistent with Section 766.31, Florida Statutes.

Here, the parties were unable to reach agreement. Therefore, a hearing was scheduled for June 21, 2004, to resolve the issues.

On June 15, 2004, the parties filed their Pre-Award Hearing Stipulation which, together with the parties' stipulations at hearing, resolved the factual matters addressed in paragraph 1 of the Findings of Fact. At hearing, Petitioner, Dajuanda Alexander, testified on her own behalf. No other witnesses were called and no exhibits were offered.

The transcript of the hearing was filed July 8, 2004. Although offered the opportunity to do so, the parties waived the opportunity to submit proposed orders.

#### FINDINGS OF FACT

1. Here, the parties have stipulated that Petitioner, Dajuanda Alexander, as the parent of Elliott L. Davis, III (Elliott), a minor, be awarded \$100,000.00, to be paid in lump sum, as well as \$10,000.00 for attorney's fees and \$500.00 for costs incurred in connection with the filing of the claim. The parties have further agreed that, apart from a claim for travel-related expenses, discussed infra, no monies are owing and no claim is made by Petitioner for past expenses.

2. With regard to the claim for travel-related expenses, Petitioner seeks to recover "approximately \$27,000.00," based

upon her estimate that she incurred, on average, costs of \$6,000.00 per year in travel-related expenses associated with Elliott's medical needs, including "going to and from doctors' offices, various visits for neurology, eye doctor, ER visits, hospital to and from, prosthesis, vision therapy, Nemours Clinic, pulmonary, occupational therapy, [and] physical therapy." (Transcript, page 8) Notably, however, not one iota of proof was offered to demonstrate the dates of travel, the distance traveled, the method of travel, the purposes of travel, or any other factor on which a conclusion could be drawn that the expenses claimed were reasonable in amount and were incurred for travel related to medically necessary care, treatment or other needs, as required for reimbursement under the Plan. § 766.31(1)(a), Fla. Stat. Consequently, the proof fails to support an award for travel-related expenses.

#### CONCLUSIONS OF LAW

3. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. § 766.301, et seq., Fla. Stat.

4. Pertinent to this case, Section 766.31(1), Florida Statutes, provides that where, as here, a claim for compensation has been approved, "the administrative law judge shall make an award providing compensation for the following items relative to such injury:"

(a) Actual expenses for medically necessary and reasonable medical and hospital, habilitative and training, residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel . . . .

\* \* \*

Expenses included under this paragraph shall be limited to reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person.

(b) 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 a lump sum.

(c) Reasonable expenses incurred in connection with the filing of a claim under ss. 766.301-766.316, including reasonable attorney's fees, which shall be subject to the approval and award of the administrative law judge. In determining an award for attorney's fees, the administrative law judge shall consider the following factors:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.
2. The fee customarily charged in the locality for similar legal services.
3. The time limitations imposed by the claimant or the circumstances.
4. The nature and length of the professional relationship with the claimant.
5. The experience, reputation, and ability of the lawyer or lawyers performing services.
6. The contingency or certainty of a fee.

5. Here, the parties agreed that Petitioner, Dajuanda Alexander, as the parent of Elliott L. Davis, III, a minor, be awarded \$100,000.00, to be paid in lump sum, as well as \$10,000.00 for attorney's fees and \$500.00 for costs incurred in pursuing the claim. The parties' agreement, being reasonable in nature and amount is approved; however, Petitioner's claim for travel-related expenses must, for reasons appearing in the Findings of Fact, be denied.

#### CONCLUSION

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

ORDERED that the following benefits are awarded:

1. Petitioner, Dajuanda Alexander, as the parent of Elliott L. Davis, III, a minor, is awarded \$100,000.00, to be paid in lump sum.

2. Petitioner, Dajuanda Alexander, as the parent of Elliott L. Davis, III, a minor, is also awarded \$10,000.00 for attorney's fees and \$500.00 for costs incurred in connection with the filing of the claim.

3. Petitioner's claim for past expenses is denied.

DONE AND ORDERED this 12th day of July, 2004, 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 12th day of July, 2004.

ENDNOTE

1/ All citations are to Florida Statutes (1999), unless  
otherwise indicated.

COPIES FURNISHED:  
(via Certified Mail)

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

Kenney Shipley, Executive Director  
Florida Birth-Related Neurological  
Injury Compensation Association  
1435 Piedmont Drive, East, Suite 101  
Post Office Box 14567  
Tallahassee, Florida 32308



Lynn Walker Wright, Esquire  
2716 Rew Circle, Suite 102  
Ocoee, Florida 34761

Richard L. Allen, Jr., Esquire  
Mateer & Harbert, P.A.  
108 East Central Boulevard  
Post Office Box 2854  
Orlando, Florida 32802-2854

Thomas E. Dukes, III, Esquire  
Ruth C. Osborne, Esquire  
McEwan, Martinez & Dukes, P.A.  
Post Office Box 753  
Orlando, Florida 32802-0753

Ms. Charlene Willoughby  
Department of Health  
4052 Bald Cypress Way, Bin C-75  
Tallahassee, Florida 32399-3275

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 the original of a notice of appeal with the Agency Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the appropriate District Court of Appeal. See § 766.311, Fla. Stat., 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.