

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT W. DEGUENTHER, JR. and	)	
KAREN COFFEY DEGUENTHER, on	)	
behalf of and as parents and	)	
natural guardians of ROBERT W.	)	
DEGUENTHER, III, a minor,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. 03-3341N
	)	
FLORIDA BIRTH-RELATED	)	
NEUROLOGICAL INJURY	)	
COMPENSATION ASSOCIATION,	)	
	)	
Respondent.	)	
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SUMMARY FINAL ORDER OF DISMISSAL

This cause came on to be heard on the parties' Joint Motion to Accept Stipulation of Facts and Motion for Summary Final Order, filed February 20, 2004.

STIPULATED FACTS

1. By their Joint Stipulation of Facts, the parties have stipulated, as follows:

1. On September 17, 2003, the Petitioners as parents and natural guardians of ROBERT W. DEGUENTHER, III, a minor, filed a claim with the Division of Administrative Hearings ("DOAH") for compensation under the Florida Birth-Related Neurological Injury Compensation Plan (the "Plan"). Such Petition is fully incorporated herein by reference.

2. ROBERT W. DEGUENTHER, III, was born on July 3, 2001, at 8:53 a.m., at Florida Hospital Altamonte, located at 601 East Altamonte Drive, Altamonte Springs, FL 32701.

3. ROBERT W. DEGUENTHER, JR., and KAREN COFFEY DEGUENTHER, currently of 251 Burning Tree Drive, Heritage, TN 37076, are the parents and natural guardians of the infant.

4. David L. Goss, M.D., whose address is 521 West State Road 434, #201, Longwood, FL 32750, provided obstetrical services during the delivery of ROBERT W. DEGUENTHER, III.

5. David L. Gross [sic], M.D., is a participating physician as defined in Section 766.302(7), Florida Statutes.

6. The Parties stipulate that the attached medical records from Florida Hospital are true and correct copies of the medical records kept in the normal course of business.

7. The Parties stipulate that, at birth, the infant, ROBERT W. DEGUENTHER, III, weighed 2480 grams.

Notably, all the medical records attached to the stipulation are consistent and reflect that, at birth, Robert W. Deguenther, III (Robert), weighed 2,480 grams. Finally, in their Joint Motion to Accept Stipulation of Facts and Motion for Summary Final Order, the parties have agreed that the minimum birth weight required for coverage under the Plan in this case is 2,500 grams, as for a single gestation.

2. Given the record, it is indisputable that Robert's birth weight was 20 grams below that required for coverage under

the Plan. Consequently, the parties' Motion for Summary Final Order is well-founded. §§ 120.57(1)(h), 766.302(2), 766.309(1), and 766.31(1), Fla. Stat. (2000).<sup>1</sup>

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. The Florida Birth-Related Neurological Injury Compensation 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. § 766.303(1), Fla. Stat.

5. The injured "infant, her or 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. §§ 766.302(3), 766.303(2), 766.305(1), and 766.313, Fla. Stat. The Florida Birth-Related Neurological Injury Compensation Association, 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." § 766.305(3), Fla. Stat.

6. If NICA determines that the injury alleged in a claim is a compensable birth-related neurological injury, 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. § 766.305(6), Fla. Stat. If, on the other hand, NICA disputes the claim, as it has in the instant case, the dispute must be resolved by the assigned administrative law judge in accordance with the provisions of Chapter 120, Florida Statutes. §§ 766.304, 766.309, and 766.31, Fla. Stat.

7. In discharging this responsibility, the administrative law judge must make the following determination based upon the available evidence:

(a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the administrative law judge, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.303(2).

(b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or

resuscitation in the immediate post-delivery period in a hospital.

§ 766.309(1), Fla. Stat. An award may be sustained only if the administrative law judge concludes that the "infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth." § 766.31(1), Fla. Stat.

8. Pertinent to this case, "birth-related neurological injury" is defined by Section 766.302(2), Florida Statutes, to mean:

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 at least 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.

9. Here, indisputably, Robert's birth weight, at 2,480 grams, was less than the minimum required by the Plan. Consequently, given the provisions of Section 766.302(2), Florida Statutes, he does not qualify for coverage under the Plan. See also Humana of Florida, Inc., v. McKaughan, 658 So. 2d 852, 859 (Fla. 5th DCA 1995)("[B]ecause the Plan . . . is a

statutory substitute for common law rights and liabilities, it should be strictly construed to include only those subjects clearly embraced within its terms."), approved, Florida Birth-Related Neurological Injury Compensation Association v. McKaughan, 668 So. 2d 974, 979, (Fla. 1996).

10. Where, as here, the administrative law judge determines that ". . . the injury alleged is not a birth-related neurological injury . . . he [is required to] enter an order [to such effect] and . . . cause a copy of such order to be sent immediately to the parties by registered or certified mail." § 766.309(2), Fla. Stat. Such an order constitutes final agency action subject to appellate court review. § 766.311(1), Fla. Stat.

#### CONCLUSION

Based on the Stipulated Facts and Conclusions of Law, it is ORDERED that the parties' Stipulation of Facts is accepted, their Motion for Summary Final Order is granted, and the claim for compensation filed by Robert W. Deguenther, Jr., and Karen Coffey Deguenther, on behalf of, and as parents and natural guardians of Robert W. Deguenther, III, a minor, be and the same is dismissed with prejudice.

DONE AND ORDERED this 24th day of February, 2004, in  
Tallahassee, Leon County, Florida.



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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 24th day of February, 2004.

ENDNOTE

1/ All citations are to Florida Statutes (2000) unless  
otherwise indicated.

COPIES FURNISHED:  
(by certified mail)

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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 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 Section 766.311, 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.