

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

COREY LEONARD CHATTIC AND)
CHRISTINE LORRAINE CHATTIC, ON)
BEHALF OF AND AS PARENTS AND)
NATURALS GUARDIANS OF GAVIN)
LEONARD JOHN CHATTIC, A MINOR,)
)
Petitioners,)
)
vs.) Case No. 07-5147N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent.)
_____)

FINAL ORDER

With the parties' agreement, this case was resolved on an agreed record.

STATEMENT OF THE ISSUES

At issue is whether Gavin Leonard John Chatic (Gavin), a minor, qualifies for coverage under the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

PRELIMINARY STATEMENT

On October 24, 2007, Corey Leonard Chatic and Christine Lorraine Chatic, on behalf of and as parents and natural guardians of Gavin Leonard John Chatic, a minor, filed a petition (claim) with the Division of Administrative Hearings (DOAH) for compensation under the Plan.

DOAH served the Florida Birth-Related Neurological Injury Compensation Association (NICA) with a copy of the petition on November 13, 2007, and on January 4, 2008, NICA responded to the petition, and gave notice that it was of the view that Gavin did not suffer a "birth-related neurological injury," as defined by Section 766.302(2), Florida Statutes, because Gavin's birth weight, at 754 grams, was less than the minimum weight of 2,500 grams for a single gestation or 2000 grams for a multiple gestation required for coverage under the Plan. §§ 766.302(2), 766.309(1), and 766.31(1), Fla. Stat.

On January 31, 2008, following a status conference (held January 11, 2008), the parties filed an original Joint Stipulation of Facts and attached medical records, and agreed that the issue of compensability be resolved on their Joint Stipulation of Facts and attached medical records.

FINDINGS OF FACT

1. By their Joint Stipulation of Facts, the parties have agreed that:

1. On October 24, 2007, the Petitioners as parents and natural guardians of Gavin Leonard John Chattic ("Gavin"), 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. Gavin was born on October 30, 2006, at Lakeland Regional Medical Center.

3. Corey Leonard Chattic and Christine Lorraine Chattic, currently of 7415 Loblolly Avenue, Lakeland, Florida 33810, are the parents and natural guardians of the infant.

4. Jennifer Mignon Nixon, M.D., whose address is 1733 Lakeland Hills Boulevard, Lakeland, Florida 33805, provided obstetrical services during the delivery of Gavin.

5. Jennifer Mignon Nixon, 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 Lakeland Regional Medical Center 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, Gavin, weighed 754 grams

2. The medical records attached to the parties' Joint Stipulation of Facts reveal that Gavin was born premature, at 24 3/7 weeks' gestation, and that his birth weight was 754 grams.

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(4), 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(7), 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), 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, Gavin's birth weight was 754 grams. Consequently, given the provisions of Section 766.302(2), Florida Statutes, Gavin does not qualify for coverage under the Plan. See also Humana of Florida, Inc. v. McKaughan, 652 So. 2d 852, 859 (Fla. 2d 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 foregoing Findings of Fact and Conclusions of
Law, it is

ORDERED that the parties' Joint Stipulation of Facts is
approved.

It is further ORDERED that the claim for compensation filed
by Corey Leonard Chattic and Christine Lorraine Chattic, on
behalf of and as parents and natural guardians of Gavin Leonard
John Chattic, a minor, is dismissed with prejudice.

DONE AND ORDERED this 6th day of February, 2008, in
Tallahassee, Leon County, Florida.



WILLIAM J. KENDRICK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of February, 2008.

COPIES FURNISHED:

(Via 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.