

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NIKKI SMITH, as mother and)
natural guardian of NYHKIA)
LEWIS, a minor,)
)
Petitioner,)
)
vs.) Case No. 09-2532N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
ST. PETERSBURG GENERAL)
HOSPITAL,)
)
Intervenor.)
_____)

ORDER APPROVING STIPULATION AND JOINT PETITION
FOR COMPENSATION OF CLAIM ARISING OUT OF FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY PURSUANT TO CHAPTER 766, FLORIDA STATUTES

This cause came on for consideration pursuant to Sections 766.304 and 766.305(7), Florida Statutes, upon the Stipulation and Joint Petition of the parties, filed October 1, 2010, for the entry of an order approving the resolution of a formal claim for compensation benefits heretofore filed in this cause in accordance with the provisions of Chapter 766, Florida Statutes, and a resolution of the exclusive remedy otherwise available as outlined in Chapter 766, Florida Statutes.

By the terms of their stipulation, the parties have agreed that Nikki Smith is the mother and natural guardian of Nyhkia Lewis (Nyhkia), a minor; that Nyhkia was born a live infant on or about April 13, 2006, at St. Petersburg General Hospital, a "hospital" as defined by Section 766.302(6), Florida Statutes, located in St. Petersburg, Florida; and that Nyhkia's birth weight exceeded 2,500 grams. The parties have further agreed that Wilfredo Lorenzo, M.D., delivered obstetrical services at Nyhkia's birth, and at all times material hereto, was a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by Section 766.302(7), Florida Statutes. Finally, by their stipulation, the parties have agreed that Nyhkia suffered a "birth-related neurological injury," as that term is defined by Section 766.302(2), Florida Statutes.

After due consideration of the interests of all parties, and being otherwise fully advised in the premises, it is

ORDERED that:

1. The Stipulation and Joint Petition, filed October 1, 2010, is hereby approved, and the parties are directed to comply with the provisions thereof.¹

2. Petitioner, Nikki Smith, as the mother and natural guardian of Nyhkia Lewis, a minor, is awarded One hundred

thousand dollars (\$100,000.00), pursuant to Section 766.31(1)(b)1., Florida Statutes, to be paid in lump sum.

3. Upon payment of the award of One hundred thousand dollars (\$100,000.00), attorney's fees and other expenses, and past benefits/expenses, the claims of Petitioner (Claimant) shall be deemed fully satisfied and extinguished, except for the issues reserved in the parties' Stipulation and Joint Petition filed October 1, 2010, including attorney's fees and costs the Petitioners may be entitled to as a result thereof, and Respondent's continuing obligation under Section 766.31(2), Florida Statutes, to pay future expenses as incurred.

4. With regard to the issues reserved in the parties' Stipulation, including but not limited to any dispute regarding past benefits/expenses and attorney's fees and other expenses of the claim, a hearing will be scheduled by a separate notice of hearing to address those issues. As for the date of hearing, the parties shall, within 45 days of the date of this Order, advise the undersigned Administrative Law Judge, with specificity, of the matters remaining in dispute, of several mutually agreeable dates for hearing, and of the time required for such hearing.

5. The Division of Administrative Hearings retains jurisdiction over this matter to resolve any disputes, should

they arise, regarding the parties' compliance with the terms of this Order.

DONE AND ORDERED this 8th day of October, 2010, in Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Fax Filing (850) 921-6847
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of October, 2010.

ENDNOTE

1/ A prior Stipulation and Joint Petition filed May 11, 2010, was not approved, and by its terms is "null and void" due to non-approval.

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.