

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

COURTNEY G. MARTINEZ AND EDWARD)
MARTINEZ, as executor de son)
tort of MADISON BAILEY)
MARTINEZ, deceased,)
)
Petitioners,)
)
vs.) Case No. 10-3119N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent.)
_____)

ORDER APPROVING AMENDED 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 Amended Stipulation and Joint Petition of the parties, filed October 4, 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 Amended Stipulation, the parties have agreed that Courtney G. Martinez and Edward Martinez, were the parents and legal guardians of the deceased infant, Madison

Bailey Martinez, born a live infant on or about July 29, 2009, at Florida Hospital Celebration, a "hospital" as defined by Section 766.302(6), Florida Statutes; and that Madison's birth weight exceeded 2,500 grams. The parties have further agreed that Jennifer Swoboda, M.D., delivered obstetrical services at Madison'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 Madison incurred a "birth-related neurological injury," as that term is defined by Section 766.302(2), Florida Statutes, and died on July 30, 2009.

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

ORDERED that:

1. The Amended Stipulation and Joint Petition, filed October 4, 2010, is hereby approved,¹ and the parties are directed to comply with the provisions thereof.

2. Petitioners, Courtney G. Martinez and Edward Martinez, as the parents and legal guardians of the deceased minor, Madison Bailey Martinez, are awarded One hundred thousand dollars (\$100,000.00), pursuant to Section 766.31(1)(b)1., Florida Statutes, to be paid in lump sum, and Ten thousand

dollars (\$10,000.00) pursuant to Section 766.31(1)(b)2, the death benefit.

3. NICA shall forthwith reimburse Edmund A. Normand, Esquire, attorney for Petitioners, an agreed attorney's fee of Ten thousand dollars (\$10,000.00) and expenses of Five hundred dollars (\$500.00) totaling Ten thousand five hundred dollars (\$10,500.00) for services rendered in the filing of this claim.

4. Upon payment of the award of One hundred thousand dollars (\$100,000.00), the award of Ten thousand dollars (\$10,000.00), (death benefit), agreed attorney's fees and expenses, and past benefits/expenses, the claims of Petitioners (Claimants) shall be deemed fully satisfied and extinguished, except for the issues reserved in paragraph 13(a) of the parties' Amended Stipulation and Joint Petition (the interpretation of Section 766.31(1)(b)1, Florida Statutes), including attorney's fees and costs the Petitioners may be entitled to as a result thereof.

5. No provision is made under Section 766.31(2), Florida Statutes, to pay future benefits/expenses because the child, Madison, is deceased.

6. With regard to the issues reserved in paragraph 13(a) of the parties' Amended Stipulation, and with regard to any dispute regarding past benefits/expenses, 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.

7. 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 15th day of October, 2010, in Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
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 October, 2010.

ENDNOTE

1/ A prior Stipulation and Joint Petition filed September 17, 2010, was not approved, and by its terms, is null and void.

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.