

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LISA LONGO AND CHRISTOPHER)
LONGO, on behalf of and as)
parents and natural guardians)
of VICTORIA ANN LONGO, a minor,)
)
Petitioners,)
)
vs.) Case No. 11-1504N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a final hearing was held in this case on February 28, 2012, by video teleconference in Fort Myers and Tallahassee, Florida, before Susan Belyeu Kirkland, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: Michael A. Petruccelli, Esquire
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For Respondent: David W. Black, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Victoria Ann Longo has suffered an injury for which compensation should be awarded under the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

PRELIMINARY STATEMENT

On March 18, 2011, Lisa Longo (Mrs. Longo) and Christopher Longo (Mr. Longo), as the parents and natural guardians of Victoria Ann Longo (Victoria), a minor, filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. (Petition) with DOAH under the Plan. The Petition alleged that Victoria suffered brain damage as a result of a difficult birth.

DOAH served the Florida Birth-Related Neurological Injury Compensation Association (NICA) with a copy of the Petition on March 23, 2011; served Naples Community Hospital on March 24, 2011; and served Thomas Beckett, M.D., on June 6, 2011.

On June 14, 2011, NICA filed a response to the Petition, giving notice that the alleged injury did not "meet the definition of a 'birth-related neurological injury' as defined in Section 766.3021(2), Florida Statutes, which specifically requires that the injury render 'the infant permanently and substantially mentally and physically impaired.'" NICA

requested that a hearing be scheduled to resolve whether the claim was compensable.

The final hearing was scheduled for November 14, 2011. On August 17, 2011, NICA filed a Motion for Summary Final Order. On October 25, 2011, the parties filed a Joint Motion for Continuance. The motion was granted by Order dated October 26, 2011. By Order dated October 31, 2011, the Motion for Summary Final Order was denied. The final hearing was rescheduled for February 28, 2012.

On October 21, 2011, the parties filed a Joint Pre-hearing Stipulation, in which they agreed to certain facts as set forth in section E of the Joint Pre-hearing Stipulation. These facts have been incorporated into this Final Order.

At the final hearing, the parties agreed that the only issue to be determined was whether Victoria's injury resulted in a substantial and permanent mental and physical impairment.

At the final hearing, Mrs. Longo testified in her own behalf, and Ms. Patricia Dean was called as a live witness by Petitioners. Petitioners also offered the deposition testimony of Thomas Vedder, M.D., and Ian Miller, M.D. Petitioners' Exhibits 1, 3, 5, and 7 through 23 were admitted in evidence.

At the final hearing, NICA did not call any live witnesses. NICA presented the deposition testimony of Raymond Fernandez, M.D. NICA offered Respondent's Exhibits 1 through 5 and 7, which were admitted in evidence.

Joint Exhibit 1, the deposition testimony of Michael Duchowny, M.D., was admitted in evidence.

The one-volume Transcript was filed on March 27, 2012. On April 12, the parties filed their proposed final orders, which have been considered in the preparation of this Final Order.

FINDINGS OF FACT

1. Lisa Longo and Christopher Longo are the parents and natural guardians of Victoria Ann Longo.

2. Victoria was born a live infant at Naples Community Hospital in Naples, Florida, on December 20, 2006. Naples Community Hospital was a hospital licensed in Florida on December 20, 2006.

3. Thomas A. Beckett, M.D., was a participating physician in the Plan in 2006 and provided obstetrical services at the birth of Victoria. Obstetrical services were provided by a participating physician in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.

4. Victoria weighed in excess of 2,500 grams at birth.

5. NICA does not dispute that Victoria sustained an injury to the brain caused by oxygen deprivation during resuscitation in the immediate post-delivery period. Donald C. Willis, M.D., NICA's expert, opined:

[T]his baby had meconium aspiration syndrome with severe respiratory depression and oxygen deprivation. The baby suffered an intracranial hemorrhage while on ECMO.

There was no apparent obstetrical even [sic] that resulted in loss of oxygen or mechanical trauma to the baby's brain during labor or delivery. This is supported by the absence of fetal distress during labor and a normal umbilical cord blood gas (pH7.35). However, respiratory depression was present at birth and progressively worsened with oxygen deprivation starting shortly after delivery. ECMO was required due to the severity of respiratory depression and was complicated by an intracranial hemorrhage documented on DOL 11. Subsequent MRI is consistent with brain damage. I am not able to comment about the severity of the brain damage.

6. Victoria has an intractable seizure disorder that stems from the brain damage that she suffered during resuscitation in the immediate post-delivery period. She has epilepsy which cannot be controlled by medication. In April 2011, Victoria underwent surgery in an attempt to stop the seizures. A right frontal lobectomy was performed resulting in the resection/removal of a portion of Victoria's brain. The surgery was not successful, and Victoria continues to have seizures.

7. It is now believed that Victoria's seizures are coming from her left occipital lobe. Further surgery could damage Victoria's visual fields and is not recommended by her physicians at this time, given the risks and benefits involved.

8. Victoria's seizures last on an average of ten minutes, which is longer than most children with epilepsy experience. Prior to her surgery in April 2011, she had experienced a seizure lasting two hours. It takes her many hours to a couple of days to recover from a seizure, depending on the length of the seizure. However, she does return to baseline, meaning that she returns to her normal self. There may be some short-term memory loss. For example, she may have a seizure, and the next day not remember what she learned in school the day before.

9. On December 2011, Victoria experienced a seizure while at school. The seizure seemed typical for Victoria, involving her left side and vomiting. Four minutes into the seizure, Victoria's teacher gave her Diastat, rectally. After the administration of the medication, Victoria had a bowel movement, and the teacher administered another dose of Diastat rectally. Victoria subsequently fell asleep. She was transported to the hospital. By the time she was examined in the emergency room, Victoria was awake, but appeared tired. Her parents indicated to the emergency room staff, that this recovery was typical for Victoria. She was discharged from the hospital.

10. According to the records of Kimberly Nicholson, M.D., who treated Victoria in the emergency room, the December 2011 seizure was the first seizure that Victoria had had in three weeks. As of the date of the final hearing, February 28, 2012, this seizure was the most recent seizure that required a trip to the emergency room.

11. Victoria has attended school since she was three years old. She currently attends a pre-kindergarten program for special needs children on a full-time basis. She rides the bus to school. School personnel are aware of Victoria's seizures and have medications which they can administer in case of a seizure.

12. In the school year 2010-2011, Victoria missed 75 days of school due to medical problems. The majority of these days would have been related to the surgery performed in April 2011 and an ensuing infection. No testimony was provided on the number of days that were missed during the current school year. According to Ms. Longo, the seizure that occurred in December 2011, was on a Friday and Victoria was back in school the following Monday.

13. Victoria is an active child; she can run, walk, jump, and play. Her coordination and motor skills are not as good as her mother would like, but Victoria has been attending physical therapy and continues to progress. Victoria likes to go to the

park and swing. She likes to cook and helps her mother in the kitchen. She likes to go into the swimming pool and can dog paddle. Her mother describes her as smart and loving.

14. Dr. Michael Duchowny, a board-certified pediatric neurologist, is Victoria's treating neurologist. He first began seeing Victoria in November 2010. Dr. Duchowny has been the chief of the Comprehensive Epilepsy Center at Miami Children's Hospital for 30 years.

15. Dr. Duchowny has often served as an expert in pediatric neurology in evaluating children to determine compensability in terms of the Plan. He has evaluated approximately 200 to 300 children during the last 20 years as an expert for NICA. He has significant experience and qualifications in evaluating children with medical conditions across a wide spectrum. In the instant case, he was not retained by NICA to evaluate Victoria and render an opinion.

16. Dr. Duchowny opined that Victoria had not sustained either a substantial and permanent mental impairment or a substantial and permanent physical impairment. Dr. Duchowny believes that the issue of whether Victoria met the criteria for NICA benefits to be a clear case and not in a "gray zone."

17. In his deposition, Dr. Duchowny stated the basis for his opinion that Victoria did not qualify for NICA benefits.

To my knowledge, the children who qualify for the NICA statute have to meet both, substantial and mental and motor impairment, and to be substantial in the motor domain, generally speaking, the children are not ambulatory; and to be eligible within the mental domain, most of the children, generally speaking, are mentally retarded, and that would be the minimum criteria. From there the children are even further, could be even further impaired.

So, for example, it is one thing to take a child who is not ambulatory, for example, who are bedfast, who can't roll over, who really have overwhelming substantial motor impairment.

Similarly, in a cognitive domain, there are degrees of mental retardation, beginning with mild mental retardation, progressing all the way to really profound cognitive deficits. As I said, I think Tori [Victoria] has impairments, but I don't think that she fits within those criteria.

* * *

[M]any of the children, for example, are quadriplegic, microcephalic, they have difficult spasticity, they might not be able to roll over or sit up, they have indwelling gastrostomy tubes, they might have severe orthopedic problems; this is the typical profile of the child who is admitted to the NICA program, in my experience.

18. Dr. Duchowny described Victoria as a very engaging girl, friendly, outgoing, and fun. She has receptive and communicative skills. She is able to understand and respond appropriately and interacts with others. It is Dr. Duchowny's opinion that her social development is "exceptionally good," but

delayed for her age. He believes that Victoria will be able to attend school and will continue to learn and develop.

19. In the future, as an epileptic, Victoria will not be able to legally drive in Florida. Dr. Duchowny opines that she will be able to work, but that her limitations would preclude her from earning a high income.

20. Victoria has no spasticity, full range of movement, and no atrophy. She has normal muscle bulk, normal strength and normal tone. Her fine motor coordination is compromised. She is clumsy and poorly coordinated for her age.

21. Taking into account all the foregoing, including Victoria's permanent seizure condition, it is Dr. Duchowny's opinion that Victoria's seizure condition and its effects are not sufficient to qualify her as reaching a threshold of permanent and substantial mental and physical impairment. His opinions are credible, well-founded, and supported by his evaluation of Victoria's medical condition.

22. Ian Miller, M.D., is a pediatric neurologist with an expertise in epileptology. He was board-certified in 2008 in neurology with special expertise in child neurology. He is one of the team members who have treated Victoria at Miami Children's Hospital.

23. Prior to the instant case, Dr. Miller has never testified in a case in which benefits are being sought under the

Plan. He has never been retained by NICA to give an expert opinion, and he has never read any opinions or cases involving children that have been qualified for benefits under the Plan.

24. It is Dr. Miller's opinion that Victoria has a permanent seizure condition but that a seizure condition in and of itself does not render a child permanently and substantially mentally and physically impaired. A seizure is a temporary event, and a person will return to baseline following the seizure and after recovery from any medications used to control the seizure. The seizure should not cause any permanent loss as to what the person has learned, but there may be a temporary loss as to what was learned immediately prior to the seizure.

25. Dr. Miller's testimony does not support a conclusion that Victoria has a substantial and permanent physical impairment. She is ambulatory and does not exhibit any spasticity. While she may not be able to walk while she is having a seizure, she does recover and can walk after the seizure. It is Dr. Miller's opinion that Victoria will be able to attend school, and could probably be in a mainstream class.

26. Dr. Miller is concerned that the seizure condition will create a significant barrier to Victoria's learning and social development. He feels that Victoria has the ability to learn, but that she may have absences from school as a result of the seizures that would slow her learning. He also feels that

her social appropriateness in a classroom will be a barrier to learning. He stated:

Teachers are not accommodating to kids that stand out in school. They have way too much on their plates already. They're underfunded and they have too few resources, and trouble making kids, which is what this manifests as later on, to get sent to the principal's office and expelled.

It is assumed that this scenario is based on Victoria being placed in a mainstream class, rather than a special education class.

27. Dr. Miller's testimony does not support a finding that Victoria has a permanent and substantial mental and physical impairment.

28. In March 2011, Victoria was evaluated by Brandon Korman, Psy.D, at Miami Children's Hospital prior to Victoria's right frontal lobectomy. His examination revealed the following:

Victoria was functioning in the low average range, with much stronger verbal than nonverbal skills, better receptive than expressive language, and poor speech articulation. She had weak problem-solving and fine motor skills, with an inefficient writing grip. She demonstrated poor attention and significant off-task behavior during testing. Victoria was at that time about 9 months below grade level academically.

29. Victoria's actions are often socially inappropriate. When she does not get her way, she will throw a temper tantrum. Her mother describes her as a loving child who likes attention

and wants to give attention to others with hugs and kisses. She is impulsive and has a short attention span. Dr. Korman recommended intense behavioral therapy as well as speech and occupational therapy.

30. Victoria's pediatrician is Charles Todd Vedder, M.D. He does not currently treat any children who have qualified for NICA benefits. He has never been asked to evaluate a child to determine whether the child qualifies for benefits under the Plan.

31. It is Dr. Vedder's opinion that the recovery time after a seizure is a transient condition, and the patient will return to baseline after the recovery.

32. Dr. Vedder believes that Victoria has developmental delays, but that she will continue to progress. She will be able to toilet herself, brush her teeth, groom her hair, and things of that nature. However, it is his opinion that she will never catch up with her peers. Dr. Vedder's testimony does not support a conclusion that Victoria has a permanent and substantial mental and physical impairment as contemplated by the Plan.

33. Patricia Dean, is a nurse practitioner, and the clinical coordinator of the Comprehensive Epilepsy Program at Miami Children's Hospital. She has worked at Miami Children's Hospital in dealing with children with epilepsy for 30 years.

Ms. Dean works under the direction of the neurologists at Miami Children's Hospital, which includes Dr. Miller and Dr. Duchowny.

34. Ms. Dean was part of the team at Miami Children's Hospital that treated Victoria. She believes that Victoria has sustained a significant amount of brain damage and cognitive impairment. She does not feel that Victoria will ever be able to live alone when she is age appropriate because of her seizure condition.

35. Ms. Dean opined that Victoria will never drive a car, hold a job, or live independently. She thinks that Victoria will continue to improve and progress in school but it will be at a slower pace than her peers. Ms. Dean agrees with Dr. Korman that Victoria's intelligence quotient is in the low-average range.

36. Ms. Dean is in agreement with Dr. Vedder that a seizure is a transient event and that a person with epilepsy typically returns to baseline after recovery from a seizure. Persons who experience seizures will typically have short-term memory loss, meaning that they will forget what they learned the day before the seizure.

37. Ms. Dean has the opinion that Victoria meets the qualifications for benefits from the Plan. Other than the instant case, Ms. Dean has never been asked to testify in a proceeding to determine compensability under the Plan. Based on

her testimony, it is concluded that Ms. Dean has the opinion that because Victoria will never be a "normal" child that she should qualify for benefits pursuant to the Plan. While it is true that Victoria will never be "normal," her impairments do not rise to the level of permanent and substantial mental and physical impairments contemplated as compensable under the Plan.

38. Dr. Raymond Joseph Fernandez, M.D., evaluated Victoria at the request of NICA. He is board-certified in pediatrics and neurology together with child neurology and has been practicing pediatric neurology for 35 years.

39. Dr. Fernandez has evaluated approximately 15 to 20 children on behalf of NICA to determine whether they qualify for benefits under the Plan. He is familiar with the applicable guidelines and, in fact, has opined in the majority of the cases that the children do qualify under the criteria of the Plan.

40. Dr. Fernandez reviewed Victoria's medical records and, on June 1, 2011, evaluated Victoria in person. In this particular case, he does not feel that Victoria meets the applicable qualifications. In fact, when questioned as to whether this case is a close call, he opined that it was not a close call and that Victoria clearly does not qualify under the applicable criteria. She does not have a substantial and permanent motor impairment and does not have a substantial and permanent mental impairment. He opined that the seizure

condition is an intermittent impairment and not a permanent impairment.

41. When Dr. Fernandez examined Victoria, she displayed a high activity level, and her attention span was short. He asked her questions such as her name, age, and birthday. Victoria responded appropriately to the questions. She told Dr. Fernandez her brother's name and counted her fingers up to three correctly. Victoria was able to speak single words and short phrases. She identified colors, drew circles on request, and copied an "X" when demonstrated. Dr. Fernandez observed that Victoria could walk well independently, run, jump off the ground on two feet, and hop on either foot alone. She was able to stack one-inch cubes.

42. It is Dr. Fernandez's opinion that Victoria has the capacity to learn and to develop socially. Learning will not be easy for Victoria, but she has the capability to learn. He believes that she will be eventually able to engage in gainful employment. He feels that Victoria will be able to attend school and could be in a mainstream class with some accommodations for her short attention span, such as a tutor.

43. Dr. Fernandez's opinion that Victoria does not have a permanent and substantial mental and physical impairment is credited.

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 766.301-766.316, Fla. Stat. (2011).

45. The Plan was established by the Legislature "to provide compensation on a no-fault basis, for a limited class of catastrophic injuries that result in unusually high costs for custodial care and rehabilitation." § 766.301. The Plan applies only to a birth-related neurological injury, which is defined in section 766.302(2) as follows:

'Birth-related neurological injury' means 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. (emphasis added).

46. 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 DOAH. §§ 766.302(3), 766.303(2), and 766.305(1). 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 submit relevant written information relating to the issue of whether the injury is a birth-related neurological injury." § 766.305(4).

47. 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). 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.

48. In discharging this responsibility, the Administrative Law Judge must make the following determinations based upon all 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. 766.302(2).

(b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery 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 postdelivery 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).

49. The parties have stipulated that a participating physician provided obstetric services at Victoria's birth in a hospital licensed in Florida. Victoria was born a live infant and weighed more than 2,500 grams. NICA agrees that Victoria sustained an injury to the brain caused by oxygen deprivation during resuscitation in the immediate post-delivery period. The issue to be determined is whether the injury resulted in a permanent and substantial mental impairment and a permanent and substantial physical impairment, inasmuch as both are required to establish compensability. Fla. Birth-Related Neurological Injury Comp. Ass'n v. Div. of Admin. Hearings, 686 So. 2d 1349 (Fla. 1997) (the "Birnie" decision).

50. Petitioners have the burden to establish that the injury Victoria sustained resulted in her being rendered permanently and substantially mentally and physically impaired. § 766.309(1)(a). See also Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977) ("[T]he burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.").

51. The Legislature did not define "permanently and substantially mentally and physically impaired." However, those terms should be read in the context of the legislation creating the Plan. The Legislature intended that only a limited class of catastrophic injuries be compensable under the Plan.

52. In Matteini v. Florida Birth-Related Neurological Injury Compensation Association, 946 So. 2d 1092, 1095 (Fla. 5th DCA 2006), the court discussed the criteria for a physical impairment.

Under the Plan, a "physical impairment" relates to the infant's impairment of his "motor abnormalities" or "physical functions," which along with the brain injury significantly affects the infant's mental capabilities so that the infant will not be able to translate his cognitive capabilities into adequate learning or social development in a normal manner.

53. The evidence is clear that Victoria does not have a permanent and substantial physical impairment. She can run, walk, hop, draw, speak, communicate, stand, and sit up. She has

no spasticity and no atrophy. She helps her mother cook and dog paddles in the swimming pool.

54. Victoria does have an intractable seizure condition and during the seizures and part of the recovery time after a seizure, she may not be able to walk, sit up, or communicate. However, once she has recovered from the seizure she returns to baseline, which means that she can do all the physical activities that she did before the seizure. The seizures are a transient impairment.

55. In Adventist Health System/Sunbelt, Inc. v. Florida Birth-Related Neurological Injury Compensation Association, 865 So. 2d 561, 567 (Fla. 5th DCA 2004), the court in explaining the Birnie decision stated: "[U]nder NICA, the identification of a substantial mental impairment may include not only significant cognitive deficiencies but can include, in a proper case, additional circumstances such as significant barriers to learning and social development."

56. The child in the Birnie decision was found to have both permanent and substantial mental and physical impairments, although tests indicated that he was average or above average in his cognitive skills and preacademic skills. The child in Birnie is described as follows:

At the time of the hearing in this case, Eric was 4 1/2 years old. He was unable to stand up, walk, or crawl. His only method

of independent mobility was to roll over. The use of his hands and arms was very limited. He also had great difficulty talking and/or communicating and he must take long pauses to formulate a response to any inquiry.

Eric's brain dysfunction is permanent. Because Eric's speech is greatly impacted by his condition, it is virtually certain that he will always be severely limited in his verbal expression and other communication skills. While continued therapy may help him to communicate better and to become somewhat more mobile, he will almost certainly never be able to walk, feed, groom or toilet himself.

* * *

As a direct result of his injury, Eric will not be able to communicate, attend school or otherwise learn and develop intellectually without substantial accommodation. His social and vocational development have unquestionably been significantly impaired.

688 So. 2d at 1352.

57. There is a sharp contrast between Victoria and the child in the Birnie decision. Victoria does have a short attention span and at times demonstrates socially inappropriate actions. Dr. Korman feels that intense behavior therapy would address and remediate some of her developmental issues. She has the capability to learn and has shown improvement as she develops. She does attend school and should be able to continue to do so in the future. There are some disagreements among the experts whether she can attend a mainstream class or whether she

would be better suited to attend a special education class. However, there is agreement that she can attend school and that she can learn while in school.

58. Petitioners argue that because of her seizure activities, Victoria will be absent from school so much that she will be unable to learn. The evidence did establish that she missed an extraordinary amount of time from school during the 2010-2011 school year. Much of this time was attributed to her hospitalization for surgery and an infection which developed after surgery. There was no evidence presented as to the number of days that Victoria has missed in the current school year; therefore, no conclusion can be drawn that she is currently missing so much school that she cannot learn or that her learning would be drastically curtailed. None of the experts have opined that learning will be easy for Victoria. It will be hard work for her, but she has the capability to learn.

59. Victoria's intelligence quotient is in the low-average range. She can communicate and respond to questions appropriately. She can count and identify colors. She is a loving child, and her mother describes her as smart.

60. Petitioners have failed to meet their burden to demonstrate that Victoria has a permanent and substantial mental and physical impairment.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the petition filed by Lisa Longo and Christopher Longo on behalf of and as parents and natural guardians of Victoria Longo is dismissed with prejudice.

DONE AND ORDERED this 24th day of April, 2012, in Tallahassee, Leon County, Florida.

Susan Belyeu Kirkland

SUSAN BELYEU KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of April, 2012.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Review of a final order of an administrative law judge shall be by appeal to the District Court of Appeal pursuant to section 766.311(1), Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal. See § 766.311(1), Fla. Stat., and Fla. Birth-Related Neurological Injury Comp. Ass'n v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992).