

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ALLYSON WILLIAMS, as parent and
natural guardian of FATEMA
SHAKIR, a minor,

Petitioner,

vs.

Case No. 11-5710N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

SHANDS JACKSONVILLE MEDICAL
CENTER, INC., ANEESAH MAJIEDA
SANTIAGO, R.N., ANGELA JACKSON,
R.N., AND UNIVERSITY OF FLORIDA
BOARD OF TRUSTEES,

Intervenors.

_____ /

FINAL ORDER ON AWARD

Pursuant to notice a hearing was held by telephonic
conference call on the issue of the amount of award before
Susan Belyeu Kirkland, an Administrative Law Judge of the
Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ronald S. Gilbert, Esquire
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For Respondent: M. Mark Bajalia, Esquire
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For Intervenors Shands Jacksonville Medical Center, Inc.,
and Aneesah Majieda Santiago, R.N.:

S. William Fuller, Jr., Esquire
Fuller, Mitchell, Hood & Stephens, LLC
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For Intervenor Angela Jackson, R.N.:

Sanjo Shane Shatley, Esquire
Cole, Scott and Kissane, P.A.
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For Intervenor University of Florida Board of Trustees:

Eric P. Gibbs, Esquire
Estes, Ingram, Foels, and Gibbs, P.A.
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STATEMENT OF THE ISSUE

The issue in this case is the amount of award to which
Petitioner is entitled pursuant to the Final Order entered on
May 2, 2013.

PRELIMINARY STATEMENT

On May 2, 2013, a Final Order was entered in this case
finding that the injury sustained by Fatema Shakir was
compensable under the Florida Birth-Related Neurological Injury
Compensation Plan (Plan). Pursuant to the Final Order the
parties were accorded 45 days to resolve the amount of award to

Petitioner, including the amount and manner of payment of an award to Ms. Williams, attorney's fees and costs, and the amount owing for expenses previously incurred.

Counsel for Petitioner advised Respondent that Petitioner would accept the determination of NICA compensability and would submit a request for past payment and a lump sum amount of \$100,000 for parental award, and attorney's fees and costs for \$50,000.

On September 25, 2013, Petitioner filed Petitioner's Request for Payment of Parental Award and Petitioner's Motion for Payment of Past Expenses. Petitioner requested that the Florida Birth-Related Neurological Injury Compensation Association (NICA) pay a lien to the Medicaid Third Party Liability Program for past expenses that had been paid by Medicaid for Fatema Shakir. The parties filed argument and memorandum of law pertaining to the issue of the Medicaid lien.

On August 5, 2014, Petitioner filed a Motion to Compel Payment of Medicaid Lien. On September 12, 2014, a telephonic conference call was held with the parties on the issues of the Medicaid lien and award.

FINDINGS OF FACT

1. A Final Order was entered on May 2, 2013, finding that the injury sustained by Fatema Shakir was compensable under the NICA Plan. Counsel for Petitioner advised Respondent that

Petitioner would accept the determination of compensability and demanded payment of parental award, payment of a Medicaid lien, attorney's fees and costs, and future expenses.

2. Respondent has paid Petitioner \$100,000 as a lump sum parental award.

3. As of June 23, 2014, the Florida Agency for Health Care Administration, Medicaid Third Party Liability Program has a lien against Fatema Shakir as a Medicaid recipient for \$1,442,977.40.

4. Counsel for Petitioner has not provided Respondent with documentation in support of the amount of attorney's fees and costs which were incurred relating to the filing of the claim.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 766.301-766.316, Fla. Stat. (2014).

6. Section 766.31, Florida Statutes, provides:

(1) Upon determining that an infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth, the administrative law judge shall make an award providing compensation for the following items relative to such injury:

(a) Actual expenses for medically necessary and reasonable medical and hospital, rehabilitative and training, family residential or custodial care, professional residential, and custodial care and service, for medically necessary drugs, special equipment, and

facilities, and for related travel. However, such expenses shall not include:

1. Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state, or the Federal Government, except to the extent such exclusion may be prohibited by federal law.
2. Expenses for items or services that the infant has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity.
3. Expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by federal law.
4. Expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program.

Expenses under this paragraph shall be limited to reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person.

(b)1. Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award shall not exceed \$100,000. However, at the discretion of the administrative law judge, such award may be made in a lump sum.

2. Death benefit for the infant in an amount of \$10,000.

(c) Reasonable expenses incurred in connection with the filing of a claim under ss. 766.30-766.316, including reasonable attorney's fees, which shall be subject to the approval and award of the administrative law judge. In determining an award for attorney's fees, the administrative law judge shall consider the following factors:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.
2. The fee customarily charged in the locality for similar legal services.
3. The time limitations imposed by the claimant or circumstances.
4. The nature and length of the professional relationship with the claimant.
5. The experience, reputation, and ability of the lawyer or lawyers performing services.
6. The contingency or certainty of a fee.

Should there be a final determination of compensability, and the claimants accept an award under this section, the claimants shall not be liable for any expenses, including attorney's fees, incurred in connection with the filing of a claim under section 766.301-766.316 other than those expenses awarded under this section.

(2) The award shall require the immediate payment of expenses previously incurred and shall require that future expenses be paid as incurred.

7. Petitioner is entitled to a lump sum award of \$100,000, which Respondent has paid to Petitioner.

8. The past expenses paid by Medicaid for Fatema Shakir are not expenses for which NICA is responsible pursuant to section 766.31(1)(a)1.

9. Petitioner is entitled to reasonable attorney's fees and costs incurred in connection with the filing of the claim.

10. Petitioner is entitled to future expenses as set forth in section 766.31(1).

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED:

1. Within 30 days of the date of this Final Order on Award, Petitioner shall provide Respondent with documentation to support Petitioner's claim for attorney's fees and costs.

2. Petitioner's request for Respondent to pay the outstanding Medicaid lien is denied, as such expenses are not covered under the NICA Plan.

3. Respondent shall pay future expenses. Petitioner shall seek prior authorization and approval from NICA for all actual expenses incurred under section 766.31(1)(a) in advance of authorizing and obtaining any medical and hospital, rehabilitative and training, family residential or custodial care, professional residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities

and for related travel. This provision shall not be applicable with respect to any emergency medical or hospital care required for Fatema Shakir; however, Petitioner shall, as soon as practicable, advise NICA that such emergency medical and hospital care has been obtained.

4. Upon the payment of reasonable attorney's fees and cost, which have been approved by the Administrative Law Judge, the claims of Petitioner shall be deemed fully satisfied and extinguished, except Respondent's continuing obligation under section 766.31(2) to pay future expenses as incurred.

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 Final Order on Award.

DONE AND ORDERED this 17th day of September, 2014, in Tallahassee, Leon County, Florida.

Susan Belyeu Kirkland

SUSAN BELYEU KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of September, 2014.

COPIES FURNISHED:
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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).