

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GAIL GASKIN, individually and as  
parent of CAIRO GASKIN-DACOSTA,  
a minor,

Petitioner,

vs.

Case No. 12-0850N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent.

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FINAL ORDER

Pursuant to notice, a final hearing was held in this case on June 2, 2016, via video teleconference with sites in Miami and Tallahassee, Florida, before Barbara J. Staros, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Jonathan T. Gilbert, Esquire  
Cassidy Perdue, Esquire  
Colling, Gilbert, Wright & Carter, LLC  
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For Respondent: Robert J. Grace, Esquire  
The Bleakley Bovol Law Firm  
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STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

On March 8, 2012, Gail Gaskin, individually and as parent and guardian of Cairo Gaskin-Dacosta (Cairo), a minor, filed a Petition for Determination of Compensability Pursuant to Florida Statute Section 766.301 et seq. (Petition), with DOAH. The case was assigned to Administrative Law Judge Susan B. Kirkland. The Petition alleged that Cairo suffered oxygen deprivation at birth resulting in cerebral palsy and sought a determination as to compensability under the Florida Birth-Related Neurological Injury Compensation Association (NICA) statutes.

The Petition named Megan Indermaur, M.D., as the physician providing obstetric services at Cairo's birth, and that Cairo was born at Tampa General Hospital which is located in Tampa, Florida, on October 18, 2008.

DOAH served NICA with a copy of the Petition on March 15, 2012, and served Tampa General Hospital and Megan Dawn Indermaur,

M.D., with a copy of the Petition on March 16, 2012. As of the date of this Final Order, neither Tampa General Hospital nor Megan Indermaur, M.D., has petitioned to intervene into this proceeding.

On May 4, 2012, 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.'"<sup>1/</sup> NICA requested that a hearing be scheduled to resolve whether the claim was compensable.

A final hearing was scheduled for October 1, 2012. After several motions for continuance were granted, Judge Kirkland entered an Order Placing Case in Abeyance requiring the parties to advise the status of the case by August 14, 2015. The case was reassigned to the undersigned Administrative Law Judge on September 18, 2014, due to Judge Kirkland's retirement. Following one continuance, the final hearing ultimately took place on June 2, 2016.

Petitioner, Gail Gaskin, testified at the final hearing. Petitioner's Exhibits 1 through 4, which included the deposition testimony of Michael Freimark, M.D., and Dan Ha, PT, DPT, were admitted into evidence. Respondent, NICA, did not present

testimony of any live witnesses. Respondent's Exhibits 1 through 4, which included the deposition testimony of Michael Duchowny, M.D., and Gail Gaskin, were admitted into evidence.

The parties filed a Pre-hearing Stipulation, in which they agreed to certain facts as set forth in section 3 of the Pre-hearing Stipulation. These facts have been incorporated into this Final Order.

A one-volume transcript of the final hearing was filed on June 21, 2016. The parties timely filed their proposed final orders, which have been carefully considered in the drafting of this Final Order.

#### FINDINGS OF FACT

1. Gail Gaskin<sup>2/</sup> is the natural mother of Cairo Gaskin-Dacosta.

2. At all times material hereto, Gail Gaskin was an obstetrical patient of Megan Indermaur, M.D., who was a participating physician as defined in section 766.302(7), Florida Statutes.

3. Dr. Indermaur provided obstetrical services in the course of Ms. Gaskin's labor and delivery.

4. Cairo Gaskin-Dacosta was born on October 18, 2008.

5. Cairo weighed in excess of 2,500 grams at birth.

6. Cairo was born live at Tampa General Hospital, which is a licensed Florida hospital.

7. Petitioner, Gail Gaskin, had a cerclage procedure when she was five months pregnant. On October 17, 2008, Ms. Gaskin had that removed and was sent home. She went into labor the following day and was admitted to Tampa General Hospital on October 18, 2008. Upon arrival to the labor and delivery triage area, she went to the restroom and noticed she was bleeding and shivering. According to her medical records, she went to the restroom to void and there was evidence of a small amount of vaginal bleeding. She was immediately placed on a fetal heart monitor. Fetal heart tones were in the 90s-70s. The fetal heart tones did not improve. A fetal scalp electrode was placed which revealed the fetal heart tracing to be consistently in the 70s to 60s. A stat cesarean delivery was called and Ms. Gaskin was taken to the operating room. Delivery was complicated by placental abruption.

8. At birth, he was limp, blue, with no respiratory effort. Bag and mask ventilation was done for four minutes, at which time Cairo was intubated for poor respiratory effort. At about ten minutes of life, Cairo started spontaneous respiration. Cairo's Apgar scores were 2 (one minute), 4 (five minutes), and 4 (ten minutes).<sup>3/</sup> The cord pH was 6.87.

9. Following delivery, the placenta was sent to pathology.

The final pathology diagnosis was:

- Third trimester placenta 665 grams,
- Placentomegaly,
- Focal chorangiosis,
- stage 2 acute chorioamnionitis,
- Trivascular umbilical cord.

10. Cairo was taken to the NICU, where he stayed for seven days and discharged home on October 25, 2008. His Discharge

Summary includes the following:

Diagnoses:

1. Respiratory Distress;
2. Hypoxic ischemic event- Stage 1; and
3. Sepsis ruled out.

\* \* \*

Neurologic: EEG done on DOL 0 secondary to increased tone and abnormal movements. This showed no seizures, however, was consistent with diffuse encephalopathic process that could include encephalopathy or toxic/metabolic cause. A UDS was negative from 10/18. A CT of head (10/20) was found to be negative. Neurology was consulted and recommended a follow up EEG prior to discharge. A follow up EEG was performed on 10/24 and found to be negative. Neurology did not believe a follow up with them was required.

#### Medical Records of Early Treating Physicians

11. Cairo's medical records reflect that he was evaluated for developmental delay in March 2010, when he was 17 months old, by pediatric neurologist Carmen Ferreira, M.D. His history included: rolling over at three to four months, sitting at

around six months, crawling at around seven months, pulling up and cruising at about nine months, and taking a few steps at the time of the exam. Verbally, he spoke a few words, understood and followed simple commands. Dr. Ferreira's assessment was developmental delay, motor or speech, and noted that he was progressing very well with his development and did not have any focal neurologic findings that may suggest a neurologic condition. She advised Ms. Gaskin to continue with the plan of therapy through early steps.

12. During a follow-up exam two months later, Dr. Ferreira noted under History that Cairo had done very well with motor development, ran well, walked upstairs, and went downstairs with help. She noted that he was not saying many words yet. Her assessment was similar to the previous visit, and she added "gait, abnormal, noted to be wobbly when walking" to her assessment.

13. After moving from Tampa to Miami, Dr. Oscar Papazian, a pediatric neurologist, evaluated Cairo at Miami Children's Hospital in January 2012. The medical records reflect the following:

Physical Examination:

1. Vital Signs: HR 78 per minute and regular. RR 18 per minute and regular. WT: 35 pounds. HT: 38 HC: 49 cm

2. General examination reveals no neurocutaneous abnormality or dysmorphic features.
3. Systemic examination is normal. Permanent contractures NO.
4. Neurological examination reveals MS: normal except for short attention span, hyperactivity, impulsivity, language delay. CN: normal except for drooling. Muscles: mild increase muscle tone in both gastrocnemius, biceps, and pectoralis and less degree wrist and finger flexor. MSR are 3+ at both quadriceps and gastrocnemius without clonus and 2+ biceps. Plantar response. Extension bilateral. Gait: mild tip toes and toe in. Station: normal. Sensory: normal.

His diagnosis was

1. Cerebral Palsy mild spastic quadriparesis,
2. Global developmental delay,
3. Preschool ADHD combined type.  
Etiology: Ischemic hypoxic encephalopathy)

14. Cairo was treated more recently by Dr. Tatyana Dubrovsky, a pediatric neurologist. The medical records date from April 2013 through May 2015. On May 20, 2015, Dr. Dubrovsky made the following notation and assessment:

Neurological exam: The patient is awake, alert, with normal affect and behavior and cooperative with the exam. Examination of the cranial nerves II-XII was normal except poor tongue agility probably due to pseudobulbar palsy causing dysarthria and intermittent drooling. No abnormality of tone, motor and deep tendon reflexes noted.



No nystagmus, ataxia or dysmetria noted. No abnormality of stance appreciated.

Assessment:

1. Epilepsy seizure, generalized, convulsive
2. CP (cerebral palsy), spastic
3. ADD (attention deficit hyperactivity disorder, inattentive type)

Testimony of Treating Physicians and Health Providers

15. Petitioner presented the deposition testimony of Dr. Michael Freimark, a pediatric physician with Sunrise Pediatrics in Plantation, Florida. Cairo became a patient there in 2011 and was first seen by Dr. Freimark in 2012 and last seen by Dr. Freimark in February 2013.

16. Dr. Freimark noted that Cairo has an abnormal gait and delayed speech, as well as some degree of weakness on his right side. He characterized Cairo's abnormal gait as "slight" lower extremity spasticity. When explaining his use of the word "slight," he testified: "We do have patients here with severe spasticity who require bracing and are wheelchair bound. That's not the case with Cairo."

17. Dr. Freimark noted Cairo's history from the discharge summary from Tampa General Hospital. Based solely upon the hospital's discharge summary, Dr. Freimark surmised that Cairo sustained loss of oxygen at birth. While Dr. Freimark believes that Cairo's deficits amount to permanent and substantial, he deferred to pediatric neurologists to make those determinations

as he is a pediatrician, not a pediatric neurologist.

Dr. Freimark also noted that Cairo had experienced both febrile and non-febrile seizures.

18. Petitioner presented the deposition testimony of Dan Ha, a physical therapist who practices at Little Steps Rehabilitation Clinic in North Miami Beach. Cairo receives physical therapy, occupational therapy, and speech therapy at Little Steps. Dr. Ha holds a doctorate in physical therapy. Cairo's initial evaluation at Little Steps took place on September 13, 2011. The deposition was taken on December 9, 2013, so Dr. Ha's testimony relates to that two-year period of time (when Cairo was approximately three-to-five years old). Dr. Ha was asked about whether Cairo's problems were permanent and whether they constitute a substantial physical impairment:

Q. Well, are you able to say what sort of physical impairments he will have on a permanent basis?

A. That would be on my problem list in all my reevals; the tone, the cerebral palsy. Off the top of my head--let me turn to that page.

Q. I have his most recent problem list here.

A. Yeah. There you go. Cerebral palsy, I mean that's a lifelong diagnosis. Developmental delay, he will always be behind other kids. Spasticity, lifelong. Tone, lifelong. Rigidity, lifelong. Balance issue, it can get worse. Why, because, you know, for the next 10 years he's going to gain more weight. He's going

to get taller, he's going to get bigger. His center of gravity will shift. His base of support will change. Postural stability and balance, it's connected. It's going to change. It can get worse. And motor planning, like I said, the ability for you to stir a cup of coffee with a spoon. You and I take that for granted, he might not be able to do that.

19. When asked about whether Cairo has a substantial physical impairment, Dr. Ha replied as follows:

A. For me, based on my professional opinion, when you say "substantial," it's someone that cannot walk. You know, someone that requires total assistance to transfer from a wheelchair to a bed, that's substantial. Will he be functional in life, yes. Can he live on his own in the future, that's to be determined, based on his cognition. We'll know--by the time he's like 12, 13, we'll know for sure.

\* \* \*

Q: Do you have an opinion now after we've talked about his employability a little bit more on whether Cairo has a substantial physical impairment?

Mr. Grace: Same objection.

A: Again, the word "substantial" in my field is someone that is bedbound, can't walk. So "substantial" is what I would write on my report if someone requires assistance to even transfer from a wheelchair to a bed, I would put the word "substantial."

Q: You would for Cairo?

A: I would not say substantial. I would not use the word "substantial." ICD-9 codes who use the word substantial for a person

that would need assistance just to--just like I say, transfer from a wheelchair to someone that requires assistance to even put on their clothes, that's what you would call substantial in my field and in the ICD-9 coding.

Testimony of Cairo's Mother and School Records

20. Ms. Gaskin is a single mother who is Cairo's caregiver. She described Cairo's continuing problems with both fine and gross motor skill deficits that cause him to drop things, knock things over, and to have difficulty with eating food. Cairo is not allowed to use a knife so she cuts his food for him. Cairo needs help opening a milk carton and "makes a mess" when eating meals. His speech is poor so she often has to ask him to repeat himself and often has to translate what he says to others, including his teachers.

21. He has a short attention span that carries over to school. He receives special education services from Miami-Dade County Public Schools. The most recent Individual Educational Plan (IEP) in evidence placed him in Other Health Impaired, Language Impaired, and continuing to be eligible to receive, to a limited extent, physical, occupational and speech therapy within the school context. Cairo still receives these therapies on Saturdays at Little Steps, although Ms. Gaskin indicated that insurance coverage for that will run out soon.

22. On May 6, 2016, Miami-Dade Public Schools performed an IEP for Cairo. He was finishing the first grade at Gratigny Elementary School. Cairo was reported to be able to follow classroom routines and participate in activities with minimal support. He could identify most 2D and 3D shapes. He knew the letters of the alphabet and their sounds. He could identify and add coins. He could add two-digit numbers with regrouping, subtract two-digit numbers without regrouping, and find missing numbers. He was having difficulty writing legibly and using correct writing conventions such as punctuation, capitalization, and spelling. He had issues with regard to distractibility. He was having difficulty identifying words that rhyme and words with the same medial sound. Cairo was walking independently in line on all terrains. He had good sitting balance, his posture was appropriate when standing and sitting, his gait pattern and arm swing continued to improve. He could pick up things from the floor. He enjoyed participating in gross motor activities. He was independent in toileting and feeding. He could string beads, insert pegs, and build with Lego blocks. His writing and cutting skills were showing improvement. He was noted to have low muscle tone and difficulty with standing balance. Writing assignments took much time and effort.

23. Respondent presented the deposition testimony of Dr. Michael Duchowny, M.D., who was retained to evaluate Cairo.

Dr. Duchowny was deposed on November 27, 2012, and again on May 10, 2016. Dr. Duchowny is board-certified in pediatrics, neurology with special competence in child neurology, and in clinical neurophysiology. He is a senior staff attending physician in neurology at Nicklaus Children's Hospital where he is emeritus director of the Comprehensive Epilepsy Center and is the director of the neurology training programs. Dr. Duchowny is a clinical professor of neurology and pediatrics at the University of Miami School of Medicine and clinical professor of neurology at the Florida International University School of Medicine. His roles include patient care, teaching, research, and administration.

24. Dr. Duchowny reviewed Cairo's medical records and performed an independent medical examination (IME) on Cairo on April 25, 2012, and again on March 23, 2016.

25. During his first deposition on November 27, 2012, Dr. Duchowny was of the opinion that Cairo began to suffer oxygen deprivation before labor began. He believed the slight tightness of the heel cords and the absence of any post-natal situation would suggest any neurological compromise was acquired during labor and delivery. As additional support, Dr. Duchowny noted that Cairo did not require prolonged intubation or mechanical ventilation. There was no evidence of multi-organ system failure and his CT scan on day of life 3 was normal.

This suggested to Dr. Duchowny more likely than not that Cairo's neurological problems were acquired prior to the onset of labor. Dr. Duchowny expected that if a brain MRI was done currently on Cairo, it would provide better information as to whether Cairo suffered hypoxic ischemic encephalopathy. Dr. Duchowny thought it was too early at 3.5 years to tell if Cairo's speech would be completely normal, but he believed his speech would improve and progress. Dr. Duchowny also believed that Cairo's drooling would improve, but his oral motor coordination would remain poor and his speech articulation will never be 100 percent.

26. On March 23, 2016, Dr. Duchowny performed an updated IME on Cairo. On physical examination, his findings were normal. Head circumference was not only within standard percentages but was an appropriate increase from the circumference measurement taken at the 2012 IME. From a neurological standpoint, Cairo was interactive and playful but also impulsive and did not stay on task. Cairo's speech was not clear. It was dysarthric for all sounds and consonants that involve movement of the lips, tongue and cheek muscles. The motor exam did reveal some abnormalities with tone more increased in the lower extremities. Range of motion was full, there was no focal weakness, no atrophy of muscles, and no involuntary movement. Hand coordination was impaired and he had difficulty with individual finger movements and pincer grasp.

His gait was stable, although he walked in an awkward manner. Dr. Duchowny was still of the opinion that Cairo did not suffer a birth-related neurological injury. He testified that his opinion was supported by the brain MRI which was done on February 21, 2014. Dr. Duchowny read the scan as normal and saw nothing which would suggest Cairo suffered hypoxic ischemic encephalopathy. Dr. Duchowny did not know the cause of Cairo's seizures because the brain MRI was normal, but regards Cairo's seizure disorder as developmentally based because the brain MRI had no obvious lesions that provide a structural acquired symptomatic explanation for the seizures. Dr. Duchowny believed Cairo did suffer from neurological impairments but his motor disability was mild to moderate, not a substantial motor disability. Dr. Duchowny, in his March 30, 2016, report, stated the following.

In summary, Cairo's neurological examination again reveals evidence of a spastic diparesis and marked expressive language dysfluency with oromotor and oculo-motor dyspraxia. He has developed a seizure disorder that is relatively well controlled and additionally evidences problems in learning and behavior.

I have reviewed additional medical records sent on July 29, 2014, deposition testimony of Cairo's mother, his pediatrician Dr. Michael Freinark [sic], and physical therapist, Mr. Dan Ha. I also reviewed MR imaging studies including his most recent studies acquired in 2014. His last study is notable as the brain is entirely normal with



the possible exception of a slight asymmetry in the hippocampi.

Although Cairo is unequivocally disabled from both a motor and mental standpoint, he is ambulatory and is demonstrating learning capacity. Also, his recent brain MR imaging study does not show significant abnormality which suggests that Cairo's neurological disability was acquired prenatally and is not birth related. Certainly, there are no features to suggest either a mechanical injury or oxygen deprivation in the course of either labor or delivery. For these reasons, I am not recommending Cairo for inclusion within the NICA program.

27. Dr. Duchowny's opinion that Cairo's injury is inconsistent with either a mechanical injury or oxygen deprivation to the brain in the course of labor or delivery is credited.

28. The greater weight of the evidence establishes through the expert opinions of Dr. Duchowny that that there was no apparent obstetrical event that resulted in loss of oxygen to Cairo's brain during labor, delivery and continuing into the post-delivery period that resulted in brain injury.

29. Dr. Duchowny's opinion that Cairo has permanent, but not substantial, mental and physical impairments is credited.

30. Dr. Duchowny's opinion in this regard is consistent with Cairo's physical therapist, Dr. Ha, who does not characterize Cairo's physical impairments as substantial because Cairo is ambulatory. Moreover, Dr. Freimark characterized

Cairo's abnormal gait as "slight," in contrast to those patients who require bracing and who are wheelchair bound.

31. The greater weight of the evidence, including Cairo's educational records, along with Dr. Duchowny's expert opinions, establishes that while Cairo has permanent motor and mental deficits, these deficits do not render him substantially mentally and physically impaired.

#### CONCLUSIONS OF LAW

32. 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).

33. 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, Fla. Stat. (emphasis added). 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).

34. 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), Fla. Stat. NICA, 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), Fla. Stat.

35. 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.

36. 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), Fla. Stat.

37. In the instant case, Petitioner filed a claim alleging that Cairo did sustain oxygen deprivation resulting in cerebral palsy and as a result is substantially impaired. As the proponent of the issue of compensability, the burden of proof is upon Petitioner. § 766.309(1)(a), Fla. Stat. 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.").

38. The parties have stipulated that a participating physician provided obstetric services at Cairo's birth in a hospital licensed in Florida. Cairo was born a live infant and weighed in excess of 2,500 grams. The parties agree that Cairo's mental and motor deficits are permanent but disagree as to whether they were caused by oxygen deprivation or mechanical injury during labor, delivery, or the immediate post-delivery period, and whether his deficits are substantial as contemplated by section 766.302(2).

39. Dr. Duchowny's expert opinion establishes that that there was no apparent obstetrical event that resulted in loss of oxygen to Cairo's brain during labor, delivery and continuing into the post-delivery period that resulted in brain injury.

40. Dr. Duchowny's expert opinion that Cairo's deficits are not "substantial" is consistent with Cairo's physical therapist, Dr. Ha, who does not characterize Cairo's physical impairments as substantial because Cairo is ambulatory. Moreover, Dr. Freimark characterized Cairo's abnormal gait as "slight," in contrast to those patients who require bracing and who are wheelchair bound.

41. Even if the evidence supporting an ischemic event were more substantial, the remaining 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).

42. While Petitioner has presented factual evidence regarding Cairo's difficult birth, and that he has physical and mental impairments, it has not been established through expert opinion that Cairo has a substantial mental and physical impairment as contemplated by section 766.302. There have been no expert opinions filed contrary to the credible opinions of NICA's expert pediatric neurologist. Thus, Cairo is not entitled to benefits under the NICA Plan.

#### CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition filed by Gail Gaskin, on behalf of and as parent of Cairo Gaskin-Dacosta, is dismissed with prejudice.

DONE AND ORDERED this 18th day of August, 2016, in  
Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th of August, 2016.

ENDNOTES

<sup>1/</sup> This response was based in part on a medical report from NICA's maternal-fetal expert, Dr. Donald Willis. However, Dr. Willis' report or opinion is not in evidence and was, therefore, not considered.

<sup>2/</sup> Petitioner's name is occasionally referenced as Gail Gaskin-Hernandez in the record. At hearing, she identified herself as Gail Gaskin.

<sup>3/</sup> The 10-minute Apgar score was referenced as 4 on the NICU admission form, but in a later record was referenced as 5. The correct 10-minute score appears to be 4.

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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).