

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LANCIA FONTES AND LIONEL)
DAVILA, on behalf of and as)
parents and natural guardians)
of, ISRAEL DAVILA-FONTES, a)
minor,)
)
Petitioners,)
)
vs.) Case No. 12-3665N
)
FLORIDA BIRTH-RELATED)
NEUROLOGICAL INJURY)
COMPENSATION ASSOCIATION,)
)
Respondent,)
)
and)
)
ORLANDO HEALTH, INC., d/b/a)
WINNIE PALMER HOSPITAL FOR)
WOMEN & BABIES AND PAMELA)
CATES-SMITH, M.D.,)
)
Intervenors.)
_____)

FINAL ORDER APPROVING STIPULATION FOR ENTRY OF AWARD

This cause came on for consideration pursuant to sections 766.304 and 766.305(7), Florida Statutes, upon the Stipulation and Joint Petition for Compensation of Claim Arising out of Florida Birth-Related Neurological Injury Pursuant to Chapter 766, Florida Statutes (Stipulation and Joint Petition), filed with the Division of Administrative Hearings on April 9, 2013, for the entry of an order approving the resolution of a claim

for compensation benefits filed in accordance with the provisions of chapter 766 and a resolution of the exclusive remedy otherwise available as outlined in chapter 766.

By the terms of their stipulation, Petitioners, Lancia Fontes and Lionel Davila on behalf of and as parents and natural guardians of Israel Davila-Fontes, a minor, and Respondent, the Florida Birth-Related Neurological Injury Compensation Association (NICA) have agreed that Lancia Fontes and Lionel Davila are the parents and legal guardians of Israel Davila-Fontes (Israel), a minor; that Israel was born a live infant on or about February 26, 2011, at Winnie Palmer Hospital for Women and Babies, a "hospital" as defined by section 766.302(6) located in Orlando, Florida; and that Israel's birth weight exceeded 2,500 grams. The Parties have further agreed that Pamela Cates-Smith, M.D., provided obstetrical services at Israel's delivery and was a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by section 766.302(7). The Parties have agreed that Israel suffered a "birth-related neurological injury," as that term is defined by section 766.302(2), which was the sole and proximate cause of Israel's permanent and substantial mental and physical impairments.

Paragraph 12 of the Joint Stipulation and Petition provides:

The Petitioners disagree as to NICA's interpretation of Section 766.31(1)(b)1, Florida Statutes, with respect to the payment of the parental award. Section 766.31(1)(b)1, Florida Statutes, states:

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.

The issues on which the Parties disagree are whether Section 766.31(1)(b)1, Florida Statutes, only entitles two parents to a single parental award of \$100,000 in the aggregate, and, if so, whether that statute is constitutional. At this time, those issues are currently pending before the Florida Supreme Court in Samples v. NICA (SC 10-1295). The Parties to the instant case request that this case be abated only with regard to the above issues until a decision is reached in Samples, so that the Administrative Law Judge may later award Petitioners a second \$100,000 parental award if the Samples case should determine that Section 766.31(1)(b)1 entitles them to it, as well as any attorney fees and costs that may be due in connection with the second parental award.

It is ORDERED:

1. The Stipulation and Joint Petition filed on April 9, 2013, is hereby approved, and the Parties are directed to comply with the provisions of the Stipulation and Joint Petition.

2. Petitioners, Lancia Fontes and Lionel Davila, as the parents and legal guardians of Israel Davila-Fontes, a minor, are

awarded one hundred thousand dollars (\$100,000.00), pursuant to section 766.31(1)(b)1, to be paid as periodic payments and for use for home, vehicle, or related expenses; payment of benefits up to and including the effective date of the Joint Stipulation and Petition pursuant to section 766.31(1)(a), subject to the provisions of paragraph 20 of the Stipulation and Joint Petition; and payment of future expenses as incurred.

3. Respondent shall pay Hector More, Esquire, attorney for Petitioners, ten thousand dollars (\$10,000.00) for attorney's fees and two thousand four hundred nine dollars and thirty cents (\$2,409.30) for expenses, totaling twelve thousand four hundred nine dollars and thirty cents (\$12,409.30) in full, for services rendered in the filing of Petitioners' claim.

4. Upon the payment of the award of \$100,000.00, attorney's fees and other expenses totaling \$12,409.30 incurred in connection with the filing of this claim, and past benefit/expenses, the claims of Petitioners shall be deemed fully satisfied and extinguished, except for the issues reserved in paragraph 12 of the Joint Stipulation and Petition and 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 Order and the issues reserved in paragraph 12 of the Joint Stipulation and Petition.

DONE AND ORDERED this 18th day of April, 2013, in Tallahassee, Leon County, Florida.



SUSAN BELYEU KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of April, 2013.

COPIES FURNISHED:
(Via Certified Mail)

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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).