

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DANIEL COURTNEY MCGRANE AND
HEATHER LOUISE MCGRANE, on
behalf of and as parents and
natural guardians of MATTHEW
EUGENE MCGRANE, a minor,

Petitioners,

vs.

Case No. 12-3890N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

ORLANDO HEALTH, INC., d/b/a
WINNIE PALMER HOSPITAL FOR WOMEN
& BABIES AND AMANPREET BHULLAR,
M.D.,

Intervenors.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon a Motion for
Summary Final Order filed by Respondent, Florida Birth-Related
Neurological Injury Compensation Association (NICA), on June 3,
2013.

STATEMENT OF THE CASE

On November 30, 2012, Petitioners, Daniel Courtney McGrane and Heather Louise McGrane, on behalf of and as parents and natural guardians of Matthew Eugene McGrane (Matthew), a minor, filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. (Petition) with the Division of Administrative Hearings (DOAH) for a determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Petition named Amanpreet Singh Bhullar, M.D., as the physician who provided obstetric services for the birth of Matthew. The Petition stated that Matthew was born at Winnie Palmer Hospital for Women and Babies, in Orlando, Florida, on July 7, 2010.

DOAH served NICA with a copy of the Petition on December 5, 2012.

On December 17, 2012, Dr. Bhullar and Orlando Health, Inc., d/b/a Winnie Palmer Hospital for Women and Babies filed Interveners' Petition for Leave to Intervene. By Order dated January 3, 2013, Dr. Bhullar and Winnie Palmer Hospital for Women and Babies were granted leave to intervene.

On June 3, 2013, NICA filed a Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim was not compensable because Matthew did not meet

the requisite minimum statutory birth weight as required by section 766.302(2), Florida Statutes.

As of the date of this Summary Final Order of Dismissal, neither Petitioners nor Intervenors have filed a response to the Motion for Summary Final Order.

FINDINGS OF FACT

1. Matthew Eugene McGrane was born on July 7, 2010, at Winnie Palmer Hospital for Women and Babies in Orlando, Florida.

2. Based on his hospital records, Matthew weighed 1,415 grams at birth. He was a single gestation.

CONCLUSIONS OF LAW

3. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

4. The Plan was established by the Legislature "for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims" relating to births occurring on or after January 1, 1989. § 766.303(1), Fla. Stat.

5. 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 to submit relevant written information relating to the issue of whether the injury is a birth-related neurological injury." § 766.305(4), Fla. Stat.

6. NICA has determined that Matthew does not have a claim that is compensable under the Plan and has filed a Motion for Summary Final Order, requesting that an order be entered finding that the claim is not compensable.

7. In ruling on the motion, the Administrative Law Judge must make the following determination based upon the 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. 766.303(2).

§ 766.309(1), Fla. Stat.

8. The term "birth-related neurological injury" 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.

9. The evidence, which is not refuted, established that Matthew was a single gestation and did not weigh at least 2,500 grams at birth. Thus, Matthew has not sustained a birth-related neurological injury because he did not meet the minimum statutory weight as set forth in the definition of "birth-related neurological injury," in section 766.302(2).

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition filed by Daniel Courtney McGrane and Heather Louise McGrane, on behalf of and as parents and natural guardians of Matthew Eugene McGrane, is dismissed with prejudice.

DONE AND ORDERED this 27th day of June, 2013, in Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of June, 2013.

COPIES FURNISHED:

(Via Certified Mail)

Kenney Shipley, Executive Director
Florida Birth Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(Certified Mail No. 7012 1010 0001 8357 7267)

Carl Rufus Pennington, Esquire
Carl Rufus Pennington, III, P.A.
Suite 609
320 North 1st Street
Jacksonville Beach, Florida 32250
(Certified Mail No. 7012 1010 0001 8357 7274)

Joseph P. Menello, Esquire
Wicker, Smith, O'Hara, McCoy and Ford, P.A.
Post Office Box 2753
Orlando, Florida 32802-2753
(Certified Mail No. 7012 1010 0001 8357 7281)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7012 1010 0001 8357 7298)

Elizabeth Dudek, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified Mail No. 7012 1010 0001 8357 7304)

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).