

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAIME VENTURA AND JAHDAI )  
RODRIGUEZ, on behalf of and as )  
parents and natural guardians )  
of IZAEEL JARIEL VENTURA- )  
RODRIGUEZ, a minor, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 12-3893N  
 )  
FLORIDA BIRTH- RELATED )  
NEUROLOGICAL INJURY )  
COMPENSATION ASSOCIATION, )  
 )  
Respondent, )  
 )  
and )  
 )  
ORLANDO HEALTH, INC., d/b/a )  
WINNIE PALMER HOSPITAL FOR )  
WOMEN & BABIES, )  
 )  
Intervenor. )  
\_\_\_\_\_ )

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 March 20, 2013.

STATEMENT OF THE CASE

On November 20, 2012, Petitioners, Jaime Ventura and Jahdai Rodriguez, on behalf of and as parents and natural guardians of Izael Jariel Ventura-Rodriguez (Izael), a minor,

filed a Petition for Benefits Pursuant to Florida Statutes 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 Timothy D. O'Leary, M.D., as the physician who provided obstetric services for the birth of Izael. The Petition stated that Izael was born at Winnie Palmer Hospital for Women and Babies, in Orlando, Florida.

DOAH served NICA with a copy of the Petition on December 5, 2012. DOAH served a copy of the Petition on Dr. O'Leary on February 11, 2013. On December 13, 2012, Orlando Health, Inc., d/b/a Winnie Palmer Hospital for Women and Babies filed a Petition for Leave to Intervene, which was granted by Order dated January 3, 2013.

On March 20, 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 Izael did not meet the requisite minimum statutory birth weight as required by section 766.302(2), Florida Statutes. On March 20, 2013, the parties filed a Joint Stipulation of Facts, in which the parties stipulated, among other facts, that Izael's birth weight was 935.5 grams. The parties' Joint Stipulation of Facts have been incorporated in this Summary Final Order of Dismissal.

FINDINGS OF FACT

1. Jamie Ventura and Jahdai Rodriguez are the parents and natural guardians of Izael.

2. Izael was born on December 26, 2010, at Winnie Palmer Hospital for Women and Babies in Orlando, Florida.

3. Timothy D. O'Leary provided obstetrical services during the delivery of Izael. Dr. O'Leary is a participating physician as defined in section 766.302(7).

4. Izael weighed 935.5 grams at birth.

CONCLUSIONS OF LAW

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

6. 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.

7. 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. In the instant case, Petitioners have filed a Petition under protest, stating that they are not seeking any benefits under the Plan.

8. NICA has determined that Izael 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.

9. 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.

10. 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.

11. The evidence, which is not refuted, established that Izael did not weigh at least 2,500 grams at birth. Thus, Izael has not sustained a birth-related neurological injury because Izael 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 Jaime Ventura and Jahdai Rodriguez, on behalf of and as parents and natural guardians of Izael Jariel Ventura-Rodriguez, is dismissed with prejudice.

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

*Susan Belyeu Kirklund*

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Administrative Law Judge  
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Filed with the Clerk of the  
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this 27th day of March, 2013.

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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).