

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VONSHELLE BROTHERS, individually
and as parent of IYONNA HUGLEY,
a minor,

Petitioner,

vs.

Case No. 13-1157N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

WUESTHOFF HEALTH SYSTEMS, INC.,

Intervenor.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon a Motion for Summary Final Order and a Joint Stipulation of Facts filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), on August 30, 2013.

STATEMENT OF THE CASE

On March 20, 2013, Petitioner, Vonshelle Brothers, individually and as parent of Iyonna Hugley (Iyonna), a minor, filed a Petition for Determination of Compensability 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 Mark Sargent, M.D., as the physician who provided obstetric services for the birth of Iyonna. The Petition stated that Iyonna was born at Wuesthoff Medical Center, in Rockledge, Florida.

DOAH served NICA and Dr. Sargent with copies of the Petition on April 1, 2013. DOAH served a copy of the Petition on Wuesthoff Medical Center on April 29, 2013.

On May 28, 2013, Wuesthoff Health Systems, Inc., filed a Petition for Leave to Intervene. By Order dated June 11, 2013, Wuesthoff Health Systems, Inc., was granted leave to intervene.

On August 30, 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 Iyonna did not meet the requisite minimum statutory birth weight as required by section 766.302(2), Florida Statutes. A Joint Stipulation of Facts was included with the motion as Exhibit A.

FINDINGS OF FACT

1. The parties have stipulated to the following facts.
2. Iyonna Hugley was born on October 14, 2010, at 1950 hours at Wuesthoff Medical Center, Melbourne, Florida.

3. Mark Sargent, M.D., provided obstetrical services during the delivery of Iyonna. Dr. Sargent is a participating physician in the Plan as defined in section 766.302(7).

4. At birth, Iyonna weighed 2,347 grams and was delivered from a single gestation.

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.

8. NICA has determined that Iyonna 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 stipulation of the parties has established that Iyonna was a single gestation and did not weigh at least 2,500 grams at birth. Thus, Iyonna has not sustained a birth-related

neurological injury because she 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 Vonshelle Brothers, individually and as parent of Iyonna Hugley, is dismissed with prejudice.

DONE AND ORDERED this 6th day of September, 2013, in Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of September, 2013.

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).