

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ANA M. MAYA AND CARLOS F. MAYA,  
Individually and on behalf of  
SEBASTIAN MAYA, a minor,

Petitioners,

vs.

Case No. 14-3731N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent.

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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 October 31, 2014.

STATEMENT OF THE CASE

On August 11, 2014, Petitioners, Ana M. Maya and Carlos F. Maya, on behalf of and as parents and natural guardians of Sebastian Maya (Sebastian), a minor, filed a Petition Under Protest 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 Jane Matos-Fraebel, M.D., as the physician who

provided obstetric services for the birth of Sebastian. The Petition stated that Sebastian was born at Plantation General Hospital in Plantation, Florida.

DOAH served NICA with a copy of the Petition on August 18, 2014. DOAH served Plantation General Hospital with a copy of the Petition on Plantation General Hospital on August 18, 2014. DOAH served copies of the Petition on Dr. Matos-Fraebel on August 28, 2014. As of the date of the Summary Final Order of Dismissal, neither Dr. Matos-Fraebel nor Plantation General Hospital has petitioned to intervene in this proceeding.

On October 31, 2014, NICA filed a Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim was not compensable because Sebastian did not meet the requisite minimum statutory birth weight as required by section 766.302(2), Florida Statutes, and that the five-year statute of limitations had run under the Plan. As of the date of this Summary Final Order of Dismissal, Petitioners have not filed a response to the Motion for Summary Final Order. It is noted that the Petition Under Protest requests a determination that Sebastian's injuries be determined to be non-compensable under the Plan.

### FINDINGS OF FACT

1. Sebastian Maya was born on October 11, 2006, at Plantation General Hospital in Plantation, Florida. He was a single gestation.

2. Based on the NICU discharge summary, Sebastian weighed 1,740 grams at birth. There is no dispute that Sebastian did not weigh at least 2,500 grams at birth.

3. The Petition Under Protest was filed on August 11, 2014, which is more than five years after Sebastian's birth.

### CONCLUSIONS OF LAW

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

5. 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.

6. 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.

7. NICA has determined that Petitioners do 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.

8. 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.

9. 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.

10. The evidence, which is not refuted, established that Sebastian was a single gestation and did not weigh at least 2,500 grams at birth. Thus, Sebastian did not sustain 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).

11. Moreover, the Petition Under Protest was filed more than five years after the birth of Sebastian. This is beyond the five-year statute of limitations set forth in section 766.313, and is, therefore, barred.

#### CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition filed by Ana M. Maya and Carlos F. Maya, on behalf of and as parents and natural guardians of Sebastian Maya, a minor, is dismissed with prejudice.

DONE AND ORDERED this 19th day of November, 2014, in  
Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
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Filed with the Clerk of the  
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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).