

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JERRA MYRICK, individually and  
as natural parent of JAMYRAH  
DeBOSE, a minor,

Petitioner,

vs.

Case No. 15-3747N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION, a/k/a NICA,

Respondent,

and

PUTNAM COMMUNITY MEDICAL CENTER,

Intervenor.

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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 November 6, 2015.

STATEMENT OF THE CASE

On June 23, 2015, Petitioner, Jerra Myrick, individually and as natural parent of Jamyrah DeBose (Jamyrah), 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 Laila B. Needham, M.D., as the physician who provided obstetric services for the birth of Jamyrah at Putnam Community Medical Center in Palatka, Florida, on March 27, 2014.

DOAH served NICA with a copy of the Petition on July 1, 2015. DOAH served a copy of the Petition on Putnam Community Medical Center on July 1, 2015. The website of the United States Postal Service shows that Laila B. Needham, M.D., was served a copy of the Petition on July 6, 2015.

On July 15, 2015, Putnam Community Medical Center filed a Petition to Intervene, which was granted by Order dated July 24, 2015. As of the date of the Summary Final Order of Dismissal, Dr. Laila B. Needham has not petitioned to intervene in this proceeding.

On November 6, 2015, NICA filed a Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim was not compensable because Jamyrah did not meet the requisite minimum statutory birth weight as required by section 766.302(2), Florida Statutes. On November 18, 2015, a Stipulated Motion for Extension of Time to Respond to Respondent's Motion for Summary Final Order was filed. The Motion was granted by Order dated November 18, 2015.

Intervenor's Opposition to Respondent's Motion for Summary Final Order was filed on November 24, 2015.

FINDINGS OF FACT

1. Jamyrah DeBose was born on March 27, 2014, at Putnam Community Medical Center in Palatka, Florida. She was a single gestation.

2. NICA attached to its motion a certification of medical records signed by the Director of Medical Records from Putnam Community Medical Center, and a one-page medical record for Jamyrah. The medical record shows that Jamyrah was a single gestation and her birth weight was less than 2,500 grams.

3. A review of the file reveals that no contrary evidence was presented to dispute the medical record from Putnam Community Medical Center showing that Jamyrah's birth weight was less than 2,500 grams.

4. In its Opposition to Respondent's Motion for Summary Final Order, Intervenor acknowledged that Jamyrah weighed 2,240 grams at birth.

5. Intervenor attached to its response in opposition to NICA's Motion an affidavit of Frederick E. Harlass, M.D., who opined that the statutory requirement of a baby's birth weight of 2,500 grams is unreasonable and arbitrary, especially in light of Petitioner's small stature and pre-pregnancy weight of 125 pounds.

CONCLUSIONS OF LAW

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

7. 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.

8. 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.

9. NICA has determined that Petitioner 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.

10. 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.

11. 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.

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

13. Intervenor urges the undersigned should use her "exclusive discretion" to not strictly adhere to the statutory

limitation of 2,500 grams, which Intervenor argues is a technicality. Intervenor makes, in essence, an equitable argument in that strict adherence to "an arbitrary weight limit undermines the intent of the Legislature and the spirit of the Plan, and will preclude a qualified candidate from the assistance she will so desperately need."

14. While Intervenor is correct in that the administrative law judge has the exclusive jurisdiction to determine whether a claim is compensable under the Plan, an administrative law judge does not have the discretion to ignore a clear, statutory requirement. An administrative agency has only such power as granted by the Legislature and may not expand its jurisdiction. Rinella v. Abifaraj, 908 So. 2d 1126 (Fla. 1st DCA 2005). Administrative law judges, as employees of an executive branch agency, have neither equitable powers nor the authority to decide constitutional issues. Palm Harbor Special Fire Control Dist. v. Kelly, 516 So. 2d 249, 250 (Fla. 1987); Dade Cnty. v. Overstreet, 59 So. 2d 862 (Fla. 1952).

#### CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition filed by Jerra Myrick, individually and as natural parent of Jamyrah DeBose, a minor, is dismissed with prejudice.

DONE AND ORDERED this 7th day of December, 2015, in  
Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
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Filed with the Clerk of the  
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this 7th day of December, 2015.

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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).