

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHERREAKA SMITH, Individually
and as Natural Parent of
CHARLISE SMITH, a minor,

Petitioner,

vs.

Case No. 16-5113N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

BAPTIST HOSPITAL OF MIAMI, INC.,

Intervenor.

_____ /

FINAL ORDER APPROVING STIPULATION FOR ENTRY OF AWARD

This cause came on for consideration pursuant to sections 766.304 and 766.305(7), Florida Statutes, upon the Stipulation and Joint Petition for Compensation of Claim Arising Out of Florida Birth-Related Neurological Injury Pursuant to Chapter 766, Florida Statutes (Stipulation and Joint Petition), filed with the Division of Administrative Hearings on May 17, 2017, for the entry of an order approving the resolution of a claim for compensation benefits filed in accordance with the provisions of chapter 766 and a resolution of the exclusive remedy otherwise available as outlined in chapter 766.

By the terms of their stipulation, Petitioner, Cherreaka Smith, as parent and natural guardian of Charlise Smith, a minor, and Respondent, the Florida Birth-Related Neurological Injury Compensation Association (NICA), have agreed that Cherreaka Smith is the parent and legal guardian of Charlise Smith ("Charlise"), a minor; that Charlise Smith was born a live infant on or about December 4, 2016, at Baptist Hospital of Miami, a "hospital" as defined by section 766.302(6), located in Miami, Florida; and that Charlise's birth weight exceeded 2,500 grams. The Parties have further agreed that Pierre-Richard Limousin, M.D., provided obstetrical services at Charlise's delivery and was a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by section 766.302(7). The Parties have agreed that Charlise suffered a "birth-related neurological injury," as that term is defined by section 766.302(2), which was the sole and proximate cause of Charlise's current medical condition.

It is ORDERED:

1. The Stipulation and Joint Petition filed on May 17, 2017, is hereby approved, and the Parties are directed to comply with the provisions of the Stipulation and Joint Petition.

2. Petitioner, Cherreaka Smith, as the parent and legal guardian of Charlise Smith, a minor, is awarded one hundred thousand dollars (\$100,000.00), pursuant to section

766.31(1)(b)1., to be paid as a lump sum to the parent; payment of benefits up to and including the effective date of the Stipulation and Joint Petition pursuant to section 766.31(1)(a), subject to the provisions of paragraph 19 of the Stipulation and Joint Petition; and payments of future expenses, as incurred.

3. NICA will reimburse T. Omar Malone, Esquire, attorney for Petitioner, an agreed-upon attorney's fee of \$10,000.00 for services rendered in the filing of this claim.

4. Within 30 days of the date of this Order, the Parties shall advise whether Petitioner and Respondent have agreed upon the amount of expenses due to T. Omar Malone, Esquire. If the Parties have not agreed upon the amount, the Parties shall advise the undersigned Administrative Law Judge of the matters remaining in dispute, several mutually agreeable dates for hearing, and of the time required for such hearing, and a hearing will be scheduled by a separate notice of hearing.

5. Upon the payment of the award of \$100,000.00, past benefit/expenses, and \$10,000.00 for attorney's fees and costs, the claims of Petitioner shall be deemed fully satisfied and extinguished, except for Respondent's continuing obligation under section 766.31(2) to pay future expenses, as incurred.

6. The Division of Administrative Hearings retains jurisdiction over this matter to resolve any disputes, should

they arise, regarding the Parties' compliance with the terms of this Order.

DONE AND ORDERED this 19th day of May, 2017, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
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 19th day of May, 2017.

COPIES FURNISHED:
(via certified mail)

Kenney Shipley, Executive Director
Florida Birth Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail Number 7016 2710 0000 4543 0101)

T. Omar Malone, Esquire
The Malone Law Firm, P.A.
701 Brickell Avenue
Miami, Florida 33131
(eServed)
(Certified Mail Number 7016 2710 0000 4543 0095)

Scott Edward Solomon, Esquire
Falk, Waas, Hernandez, Cortina,
Solomon and Bonner, P.A.
Suite 500
135 San Lorenzo Avenue
Coral Gables, Florida 33146
(eServed)
(Certified Mail Number 7016 2710 0000 4543 0088)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail Number 7016 2710 0000 4543 0071)

Justin Senior, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail Number 7016 2710 0000 4543 0064)

Pierre-Richard Limousin, M.D.
8950 North Kendall Drive, Suite 305
Miami, Florida 33176
(Certified Mail Number 7016 2710 0000 4543 0057)

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).