

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TERRESE FRANKLIN, as parent and
natural guardian of JAMERIOUS
WILSON, a minor,

Petitioner,

vs.

Case No. 17-0715N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

RICARDO J. LOPEZ, M.D.; AND
ORLANDO HEALTH, INC., d/b/a
WINNIE PALMER HOSPITAL,

Intervenors.

_____ /

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 July 10, 2017. On July 27, 2017, the undersigned issued an Order to Show Cause directing Petitioner to show cause in writing, on or before August 2, 2017, why Respondent's Motion for Final Summary Order should not be granted and a summary final order entered finding that Petitioner's claim is not compensable. Petitioner did not respond to the Order to Show Cause.

STATEMENT OF THE CASE

On January 30, 2017, Petitioner, Terrese Franklin, as parent and natural guardian of Jamerious Wilson (Jamerious), a minor, filed a Petitioner for Benefits Pursuant to Florida Statute Section 776.301 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 Ricardo Lopez, M.D., as the physician who provided obstetric services for the birth of Jamerious on January 1, 2014, at Winnie Palmer Hospital in Orlando, Florida.

DOAH served NICA with a copy of the Petition on February 16, 2017. On February 21, 2017, Winnie Palmer Hospital and Ricardo Lopez, M.D., filed a Joint Petition for Leave to Intervene, which was granted by Order dated February 28, 2017.

On July 10, 2017, NICA filed a Motion for Summary Final Order, requesting that a summary final order be entered finding that the claim was not compensable because Jamerious did not sustain a "birth-related neurological injury," as that term is defined in section 766.302(2), Florida Statutes, as Jamerious did not weigh at least 2,500 grams at the time of his birth.

FINDINGS OF FACT

1. Jamerious was born on January 1, 2014, at Winnie Palmer Hospital in Orlando, Florida.

2. Attached to Respondent's Motion for Summary Final Order is a certification of medical records from Dean Richey, Registered Health Information Administrator for Orlando Health, Inc., d/b/a Winnie Palmer Hospital. Said certification avers that the copies of the records attached to the certificate are true and accurate copies of the original records from Winnie Palmer Hospital related to Jamerious and Petitioner Terrese Franklin.

3. The Discharge Summary from Winnie Palmer Hospital, dated February 14, 2014, documents that Jamerious's birth weight was 1,152 grams. A Coding Summary from Winnie Palmer Hospital, concerning Petitioner Terrese Franklin, dated February 19, 2014, documents "Neonate bwt 1000-1249g w resp dist synd/oth maj resp or maj anom."

4. A review of the file reveals that no contrary evidence was presented to dispute the medical records from Winnie Palmer Hospital showing that Jamerious's birth weight was less than 2,500 grams.

CONCLUSIONS OF LAW

5. DOAH 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 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.

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:

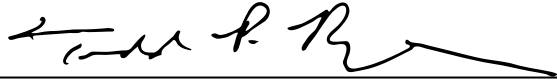
"Birth-related neurological injury" means injury to the brain or spinal cord of a live infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or mechanical injury occurring 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 Jamerious was a single gestation and did not weigh at least 2,500 grams at birth. Thus, Jamerious 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 injur," 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 Terrese Franklin, as parent and natural guardian of Jamerious Wilson, a minor, is dismissed with prejudice.

DONE AND ORDERED this 17th day of August, 2017, in
Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
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this 17th day of August, 2017.

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).