

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ASHLEY GRANT, on behalf of and
as parent and natural guardian
of BROOKLYN GRANT, a minor,

Petitioner,

vs.

Case No. 17-2303N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

WUESTHOFF MEDICAL CENTER -
ROCKLEDGE; LAHNEEN MARIE
SLANTIS, R.N.; AND CHG
HEALTHCARE SERVICES, INC.,

Intervenors.

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SUMMARY FINAL ORDER OF DISMISSAL

This came before the undersigned on Respondent's Amended Response to Petition for Benefits, filed January 17, 2019. In its Amended Response, the Florida Birth-Related Neurological Injury Compensation Association (NICA) states that, following further review of additional documentation, including school records and testing data, it has now concluded that Brooklyn Grant (Brooklyn) has not suffered a permanent and substantial mental impairment, and is therefore not a candidate for NICA

compensation. Finally, the Amended Response represents that counsel for NICA has communicated NICA's current position on the issue of compensability to all parties and is authorized to represent that no party intends to challenge the position that the claim is not compensable.

In response to NICA's new position that the subject claim is not compensable, on January 17, 2019, the undersigned issued an Order to Show Cause, stating, inter alia:

Within 10 days of the date of this Order, any party that opposes the dismissal of Petitioner's claim shall show cause in writing as to why Petitioner's claim should not be dismissed. The failure to timely respond to this Order will result in the dismissal of Petitioner's claim, with prejudice.

As of the date of this Final Order, no party has filed a response to the Order to Show Cause indicating it intends to challenge NICA's determination of non-compensability.

FINDINGS OF FACT

1. Petitioner filed her Petition for Benefits on November 7, 2016.

2. NICA reviewed the claim and initially responded by letter on September 25, 2017, indicating that it was of the opinion that Brooklyn Grant suffered a birth-related neurological injury as defined in section 766.302(2), Florida Statutes. In addition, NICA filed expert reports from

Dr. Willis and Dr. Sigurdardottir in support of its position that the claim was compensable.

3. Following NICA's initial review of the claim, additional information was provided to Dr. Sigurdardottir for further evaluation and consideration. Upon review and consideration of this additional information, Dr. Sigurdardottir issued an amended report dated December 28, 2018, in which she stated, "In light of these results, I feel we cannot at this time determine that Brooklyn has a permanent substantial mental impairment and I feel she is therefore not a candidate for NICA compensation."

4. Based on Dr. Sigurdardottir's opinion that Brooklyn does not have a permanent and substantial mental impairment, NICA is now of the opinion that her claim is not compensable because the NICA Plan (the Plan) requires the child seeking compensation to have both a permanent and substantial physical impairment and a permanent and substantial mental impairment in order to qualify for compensation.

5. No party has contested NICA's determination that the claim at issue is not compensable. Further, no party has offered evidence, in affidavit form or otherwise, to rebut NICA's determination in this regard.

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 the Division of Administrative Hearings. §§ 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. If NICA determines that the injury alleged in a claim is a compensable birth-related neurological injury, it may award compensation to the claimant, provided that the award is approved by the administrative law judge to whom the claim has been assigned. § 766.305(7), Fla. Stat. If, on the other hand, NICA disputes the claim, as it has in the instant case, the

dispute must be resolved by the assigned administrative law judge in accordance with the provisions of chapter 120, Florida Statutes. §§ 766.304, 766.309, and 766.31, Fla. Stat.

10. In discharging this responsibility, 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).

(b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital.

§ 766.309(1), Fla. Stat. An award may be sustained only if the administrative law judge concludes that the "infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth." § 766.31(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 by any contrary expert opinions, established that Brooklyn does not suffer from a permanent and substantial mental impairment. Therefore, Brooklyn is not eligible for benefits under the Plan.
§§ 766.302(2) and 766.309(1), Fla. Stat.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition filed by Ashley Grant, on behalf of and as parent and natural guardian of Brooklyn Grant, a minor, is dismissed with prejudice.

DONE AND ORDERED this 21st day of February, 2019, in
Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative
Hearings
this 21st day of February, 2019.

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).