

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LILA NATOUR and RIYAD AHMAD,
parents and natural guardians of
ZIAD AHMAD, a minor,

Petitioners,

vs.

Case No. 18-4233N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

RAMON U. FERRA, M.D.; AND MOUNT
SINAI MEDICAL CENTER OF FLORIDA,
INC., d/b/a MOUNT SINAI MEDICAL
CENTER,

Intervenors.

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SUMMARY FINAL ORDER OF DISMISSAL

This came before the undersigned on Respondent's Motion for Summary Final Order, filed March 1, 2019. In its Motion, NICA asserts that in order for a claim to be compensable under the Florida Birth-Related Neurological Injury Compensation Plan (Plan), the statutory prerequisites of section 766.309, Florida Statutes, must be met, including:

- (1) The administrative law judge shall make the following determinations based upon all available evidence:

(a) Whether the injury claimed is a birth-related neurological injury

(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.

* * *

(2) If the administrative law judge determines that the injury alleged is not a birth-related neurological injury or that obstetrical services were not delivered by a participating physician at the birth, she or he shall enter an order (emphasis added).

The term "birth-related neurological injury" is defined in section 766.302(2) as:

(2) "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. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality. (emphasis added).

According to the pertinent medical records attached to NICA's motion, the minor child's weight at birth was 2,149 grams. As such, this claim does not meet the statutory requirements of the NICA Plan, and therefore is not a compensable claim, according to NICA's motion.

Neither Petitioners nor Intervenors filed a response to NICA's motion within the allowable response period. However, due to the dispositive nature of the motion, on March 29, 2019, the undersigned entered an Order to Show Cause, affording the parties an additional opportunity to file a written response, should they so choose. No party timely filed a response to the Order to Show Cause.

FINDINGS OF FACT

1. On September 26, 2014, at 11:43 a.m., Lila Natour gave birth to a baby boy named Ziad Ahmad at Mount Sinai Medical Center.

2. A certified copy of Ziad's medical records, including the NICU Discharge Summary, was attached as Exhibit A to the Motion for Final Summary Order.

3. The medical records obtained from Mount Sinai Medical Center lists Ziad's weight at birth as 2,149 grams.

4. The only evidence of record are the limited medical records, which identify Ziad's birth weight as four pounds, 11.8 ounces, or 2,149 grams. Petitioners, who bear the burden

of proof, have submitted nothing to refute a determination that Ziad's birth weight was below the 2,500 grams required for eligibility for a single gestation, under the definition of birth-related neurological injury as defined in section 766.302(2).

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings (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" related to births occurring on or after January 1, 1989. § 766.303(1), Fla. Stat.

7. An injured infant, his or her 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. Section 766.305(4) provides that NICA, which administers the Plan, has 45 days from the date that a complete claim is served 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.

8. If NICA determines that the alleged injury is a birth-related neurological injury that is compensable under the Plan,

it may award compensation to the claimant, provided that the award is approved by the assigned administrative law judge. § 766.305(7), Fla. Stat. However, if NICA disputes the claim, as it does in this case, the dispute must be resolved by the assigned administrative law judge in accordance with chapter 120, Florida Statutes. §§ 766.304, 766.30, and 766.31, Fla. Stat.

9. The first inquiry is whether the infant has sustained a birth-related neurological injury as defined by section 766.302(2), which provides:

“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. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality. (emphasis added).

10. If the administrative law judge determines that the infant meets the statutory threshold for weight and has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury, and that as a result of the injury the infant was rendered permanently and substantially

mentally and physically impaired, then section 766.309(1) provides that there is a rebuttable presumption that the injury is a birth-related neurological injury.

11. In this case, the evidence does not support such a finding. The undisputed evidence presented indicates that at birth, Ziad weighed 2,149 grams, which is below the threshold weight specified in the definition in section 766.302(2). This issue is dispositive with respect to compensability. Based upon this evidence, Ziad did not sustain a birth-related neurological injury as defined in section 766.302(2), and is not eligible for benefits under the Plan.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law provided above, Petitioners' claim is not compensable under the Plan, and the Petition is dismissed with prejudice.

DONE AND ORDERED this 13th day of May, 2019, in Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
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this 13th day of May, 2019.

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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).