

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

VALERIE RAMOS, as parent and  
natural guardian of BAYRON  
CONCEPCION RAMOS, a minor,

Petitioner,

vs.

Case No. 18-6735N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause came for consideration on a Motion for Summary Final Order filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association ("NICA"), on July 30, 2019.

STATEMENT OF THE CASE

On December 17, 2018, Petitioner, Valerie Ramos, as parent and natural guardian of Bayron Concepcion Ramos ("Bayron"), a minor, filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 Et Seq. (the "Petition"), with the Division of Administrative Hearings ("DOAH") for the determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (the "Plan").

The Petition named Ricardo J. Lopez, M.D., as the physician who provided obstetric services at the birth of Bayron on September 26, 2017, at Winnie Palmer Hospital ("Winnie Palmer") in Orlando, Florida.

DOAH served Dr. Lopez with a copy of the Petition on or about January 2, 2019, and served Winnie Palmer that same date. NICA was also served with a copy of the Petition on January 2, 2019.

On July 30, 2019, NICA filed a Motion for Summary Final Order requesting the Administrative Law Judge enter a summary final order finding that the claim is not compensable because Bayron did not suffer a "birth-related neurological injury" as defined in section 766.302(2), Florida Statutes. NICA asserts that Bayron's birth weight fell below the statutory threshold of 2,500 grams.

On August 13, 2019, the undersigned issued an Order to Show Cause directing Petitioner to show cause, in writing, why NICA's motion should not be granted. As of the date of this Order, Petitioner has not responded to NICA's motion.

#### FINDINGS OF FACT

1. Bayron was born on September 26, 2017, at Winnie Palmer located in Orlando, Florida.

2. Petitioner filed the Petition with DOAH on December 17, 2018. With the Petition, Petitioner produced certain medical records relevant to the claim. The medical records document that Bayron's weight at birth was 2,241 grams. (Petitioner also

attached Bayron's birth certificate to the Petition. The birth certificate records Bayron's birth weight at "4 LBS 15 OZ," which equates to approximately 2,239.60 grams.)

3. A review of the medical records submitted in this matter reveals no evidence disputing a finding that Bayron weighed under 2,500 grams at his birth.

4. Based on the evidence that Bayron weighed less than 2,500 grams at birth, NICA determined that Petitioner's claim was not compensable. NICA subsequently filed the Motion for Summary Final Order asserting that Bayron has not suffered a "birth-related neurological injury" as defined by section 766.302(2).

#### CONCLUSIONS OF LAW

5. The undersigned, as an Administrative Law Judge, has exclusive jurisdiction over the subject matter of this proceeding. § 766.304, Fla. Stat.

6. The Florida Legislature established the Plan "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, then 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. 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.

9. In this matter, however, NICA determined that Petitioner’s claim is not compensable under the Plan. Therefore, NICA filed a Motion for Summary Final Order, requesting an order be entered finding that the claim is not compensable.

10. In ruling on NICA’s motion, section 766.309(1) provides that the Administrative Law Judge must make the following determination based upon the available evidence:

“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.

11. The undisputed evidence in the record establishes that Bayron did not sustain a "birth-related neurological injury" as defined in section 766.302(2), in that Bayron did not weigh at least 2,500 grams at birth. Accordingly, Bayron has not suffered a "birth-related neurological injury" and is not eligible for NICA benefits.

DISPOSITION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition is dismissed, with prejudice.

DONE AND ORDERED this 4th day of September, 2019, in Tallahassee, Leon County, Florida.



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J. BRUCE CULPEPPER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of September, 2019.

COPIES FURNISHED:  
(via certified mail)

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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).