

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

WHITNIE PADRON, AS PARENT AND
NATURAL GUARDIAN OF LANDEN PADRON,
A MINOR,

Petitioner,

vs.

Case No. 18-6737N

FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

RACHEL A. LAMBERT, M.D.; AND MORTON
PLANT HOSPITAL ASSOCIATION, INC., D/B/A
MORTON PLANT HOSPITAL,

Intervenors.

_____ /

FINAL ORDER APPROVING STIPULATION FOR ENTRY OF AN AWARD OF PAYMENTS,
EXPENSES, AND COSTS UNDER SECTION 766.31

This cause came for consideration pursuant to sections 766.304, 766.305(7), and 766.31, 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 (the "Stipulation"), filed with the Division of Administrative Hearings on February 17, 2021, for the entry of an order approving the resolution of a claim for compensation benefits filed in accordance with the provisions of chapter 766, as well as resolving the exclusive remedy otherwise available as outlined in chapter 766.

Through the Corrected Summary Final Order for Entry of Award, entered on October 13, 2020, as well as stipulations of the parties, the following facts are established in this matter:

1. Landen Padron ("Landen") was born on January 22, 2018, at Intervenor Morton Plant Hospital Association, Inc., D/B/A Morton Plant Hospital ("Plant Hospital") located in Clearwater, Florida.

2. Landen was born a live infant and weighed in excess of 2,500 grams at birth.

3. Rachel A. Lambert, D.O., was the delivering physician for Landen's birth at Plant Hospital. At that time, Dr. Lambert qualified as a "participating physician" in the Florida Birth-Related Neurological Compensation Plan (the "Plan"), as that term is defined in section 766.302(7).

4. Dr. Lambert did not provide Petitioner notice of her participation in the NICA Plan or information regarding the Plan's limited no-fault alternative for birth-related neurological injuries prior to Landen's birth. However, notice from Dr. Lambert to Petitioner was not practicable prior to Landen's birth based on the facts in the record, which show that the imminent timing of Landon's delivery when Dr. Lambert first examined Petitioner did not afford her a reasonable opportunity to discuss the NICA Plan with Petitioner.

5. Plant Hospital is a "hospital" as defined by section 766.302(6) located in Clearwater, Florida.

6. Landon suffered a "birth-related neurological injury" as that term is defined in section 766.302(2) and is eligible for an award of NICA benefits under section 766.31.

It is ORDERED:

1. The Stipulation filed on February 17, 2021, is hereby approved, and the parties are directed to comply with the provisions of the Stipulation.

2. Petitioner, Whitnie Padron, as parent and natural guardian of Landen, is awarded One Hundred Thousand dollars (\$100,000.00), pursuant to section 766.31(1)(b)1.

3. Petitioner is awarded payment of "actual expenses" up to and including the effective date of the Stipulation pursuant to section 766.31(1)(a), subject to the provisions of paragraph 16 of the Stipulation.

4. NICA will reimburse Petitioner's counsel, Carlos Diez-Arguelles, Esquire, and Diez-Arguelles & Tejedor, expenses of \$2,878.05 (consisting of \$15.00 for DOAH filing fees, \$1,763.05 for court reporting fees, and \$1,100.00 in expert fees) for services rendered in the filing of this claim, pursuant to section 766.31(1)(c).

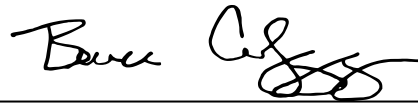
5. NICA will pay Petitioner's counsel, Carlos Diez-Arguelles, Esquire, and Diez-Arguelles & Tejedor, reasonable attorney's fees for services rendered in the filing of this claim, pursuant to section 766.31(1)(c). The amount of the attorney's fees shall be decided by separate hearing.¹

6. Upon NICA's payment of the award of \$100,000.00, as well as the benefits, attorney's fees and costs under section 766.31(1), Petitioner's claims shall be deemed fully satisfied and extinguished, except for NICA's continuing obligation under section 766.31(2) to pay future expenses, as incurred.

7. 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.

¹ The issue of the award of Petitioner's attorney's fees is currently pending before the undersigned in DOAH Case No. 21-0459F.

DONE AND ORDERED this 3rd day of March, 2021, in Tallahassee, Leon
County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
1230 Apalachee Parkway
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of March, 2021.

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).