

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ASHLEY ANDREWS AND HALEN
MCFADDEN, as parents and natural
guardians of ASHTON MCFADDEN, a
minor,

Petitioners,

vs.

Case No. 19-0928N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

GALENCARE, INC., d/b/a BRANDON
REGIONAL HOSPITAL,

Intervenor.

_____ /

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 August 29, 2019.

STATEMENT OF THE CASE

On January 30, 2019, Petitioners, Ashley Andrews and Halen McFadden, as parents and natural guardians of Ashton McFaddon ("Ashton"), 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 Mariel Rotundo-Patino, D.O., as the physician who provided obstetric services at the birth of Ashton on October 16, 2016, at Intervenor, Galencare, Inc., d/b/a Brandon Regional Hospital (the "Hospital"), in Brandon, Florida.

DOAH served Dr. Rotundo-Patino with a copy of the Petition on or about February 26, 2019, and served the Hospital that same date. NICA was also served with a copy of the Petition on February 26, 2019.

On August 29, 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 Ashton did not suffer a "birth-related neurological injury" as defined in section 766.302(2), Florida Statutes. NICA asserts that Ashton's birth weight fell below the statutory threshold of 2,500 grams.

On September 11, 2019, the undersigned issued an Order to Show Cause directing Petitioners to show cause, in writing, why NICA's motion should not be granted. As of the date of this Order, Petitioners have not responded to NICA's motion or the Order to Show Cause.

FINDINGS OF FACT

1. Based on all available evidence, the undersigned administrative law judge makes the findings of fact detailed below.

2. Ashton was born on October 16, 2016, at the Hospital located in Brandon, Florida.

3. Petitioners filed the Petition with DOAH on January 30, 2019. With the Petition, Petitioners produced certain medical records relevant to the claim. The medical records document that Ashton's weight at birth was 2,420 grams.

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

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

CONCLUSIONS OF LAW

6. An administrative law judge has exclusive jurisdiction over the subject matter of this proceeding. § 766.304, Fla. Stat.

7. 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.

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 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.

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.

10. In this matter, however, NICA determined that Petitioners' 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.

11. 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:

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

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

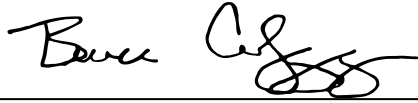
"Birth-related neurological injury" means injury to the brain or spinal cord of a live infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or mechanical injury occurring 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. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality.

13. The undisputed evidence in the record establishes that Ashton did not weigh at least 2,500 grams at birth. Accordingly, the undersigned determines that Ashton has not suffered a "birth-related neurological injury" as defined in section 766.302(2), 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 2nd day of October, 2019, in
Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of October, 2019.

COPIES FURNISHED:
(via certified mail)

Halen McFadden
Ashley Andrews
Apartment 114
8990 Carriage Court
Tampa, Florida 33617
(Certified No. 7011 1570 0003 4465 6082)

Kenney Shipley, Executive Director
Florida Birth-Related Neurological
Injury Compensation Association
2360 Christopher Place, Suite 1
Tallahassee, Florida 32308
(eServed)
(Certified No. 7011 1570 0003 4465 6099)

Tracy M. Falkowitz, Esquire
Banker Lopez Gassler, P.A.
501 East Kennedy Boulevard, Suite 1700
Tampa, Florida 33602
(eServed)
(Certified No. 7011 1570 0003 4465 6105)

Tana D. Storey, Esquire
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
(eServed)
(Certified No. 7011 1570 0003 4465 6112)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified No. 7011 1570 0003 4465 6129)

Mary C. Mayhew, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)
(Certified No. 7011 1570 0003 4465 6136)

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).