

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELICIA BARBER, on behalf of and
as Parent and Natural Guardian
of LEVI HARPER, a minor,

Petitioner,

vs.

Case No. 19-1888N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

FINAL ORDER

On November 25, 2019, the parties filed a Stipulation and Joint Petition for Compensation of Claim Arising Out of Florida Birth-Related Neurological Injury Pursuant to Chapter 766, Florida Statutes (Stipulation and Joint Petition). Petitioner and the Florida Birth-Related Neurological Injury Compensation Association (NICA) seek entry of an order approving the resolution of the claim for benefits filed in accordance with the provisions of chapter 766, Florida Statutes.

FINDINGS OF FACT

Based upon Petitioner and Respondent's stipulation, the following facts are found:

1. Elicia Barber (Petitioner) is the parent and legal guardian of Levi Harper (Levi), and is the "Claimant" as defined by section 766.302(2).

2. On or about May 11, 2019, Levi incurred a "birth-related neurological injury" as that term is defined in section 766.302(2), which was the sole and proximate cause of Levi's birth-related injury.

3. At birth, Levi weighed 2,940 grams.

4. Fernando Moreno, M.D., David Miller, M.D., and Daina Green, M.D., rendered obstetrical services in the delivery of Levi and, at all times material to this proceeding, were "participating physicians" as that term is defined in section 766.302(7).

5. St. Vincent's Medical Center is a hospital located in Jacksonville, Florida, and is the "hospital" as that term is defined in section 766.302(6), where Levi was born.

6. Petitioner filed a petition pursuant to section 766.305, seeking compensation from NICA, and that Petition is incorporated by reference in its entirety, including all attachments. Any reference made within this document to NICA encompasses, where appropriate, the Florida Birth-Related Neurological Injury Compensation Plan (the Plan).

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding pursuant to section 766.301.

8. Section 766.305(7) requires the presiding administrative law judge to approve the settlement of any claim where NICA determines that the injury is compensable.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, it is

ORDERED:

1. The Stipulation and Joint Petition filed November 25, 2019, is approved, and the parties are directed to comply with provisions of the Stipulation and Joint Petition.

2. Petitioner, Elicia Barber, as the parent and legal guardian of Levi Harper, is awarded one hundred thousand dollars (\$100,000.00), to be paid to the parent as periodic payments, pursuant to section 766.31(1)(b). Petitioner is also awarded payment of benefits as authorized pursuant to section 766.31(1)(a), subject to the provisions of paragraph 19 of the parties' Stipulation and Joint Petition.

3. NICA will reimburse Grant Kuvin, Esquire, attorney for Petitioner, an agreed-upon attorney's fee of Twelve Thousand Five Hundred Dollars (\$12,500.00) and expenses of One Thousand

Eight Hundred Thirty-four Dollars and Seventy-Five Cents (\$1,834.75), totaling Fourteen Thousand Three Hundred Thirty-Four Dollars and Seventy-Five Cents (\$14,334.75) in full, for services rendered in this proceeding.

4. Upon the payment of the award of \$100,000, and past benefits/expenses, and payment of the attorney's fee awarded to Petitioner's counsel, Petitioner's claims shall be deemed fully satisfied and extinguished, except for Respondent's continuing obligation under section 766.301(2) to pay future expenses as incurred.

5. 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.

DONE AND ORDERED this 9th day of December, 2019, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of December, 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).