

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ESTATE of ASMI GAJERA, deceased,
by and through the natural
parents, HELI PATEL, and ISHAN
GAJERA,

Petitioners,

vs.

Case No. 19-4319N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

ORLANDO HEALTH, INC., d/b/a
WINNIE PALMER HOSPITAL,

Intervenor.

_____ /

FINAL ORDER APPROVING STIPULATION

On January 7, 2020, 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). Petitioners, the Florida Birth-Related Neurological Injury Compensation Association (NICA), and Intervenor, Orlando Health, Inc., d/b/a Winnie Palmer Hospital (Winnie Palmer Hospital) seek entry of an order approving the resolution of the claim for benefits filed

in accordance with the provisions of chapter 766, Florida Statutes.

PRELIMINARY STATEMENT

On August 2, 2019, the estate of Asmi Gajera (Asmi), by and through Heli Patel and Ishan Gashera, filed a Petition for Determination of NICA Compensability (Petition), seeking benefits from NICA, for injuries related to Asmi's birth. The Petition identified Dr. Terrence Carter, M.D., as the physician providing obstetrical services, and Winnie Palmer Hospital as the hospital where Asmi was born.

The Petition was served by certified mail to NICA, Dr. Carter, and Winnie Palmer Hospital on August 19, 2019. On August 29, 2019, Winnie Palmer Hospital moved to intervene, and on August 30, 2019, NICA filed a Motion to Act as Qualified Representative. Both motions were granted.

On October 8, 2019, NICA filed a Response to Petition for Benefits, notifying Petitioner that it had determined the claim to be compensable, and was prepared to provide benefits as authorized by section 766.31.

On October 17, 2019, an Order Requiring Status Report was issued, directing the parties to file a status report no later than November 8, 2019, advising whether a hearing on the Petition would be necessary. When no response was filed, on

January 6, 2020, an Order to Show Cause was issued. That same date, the Stipulation and Joint Petition was filed.

FINDINGS OF FACT

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

1. Heli Patel and Ishan Gajera (Petitioners) are the parents and legal guardians of Asmi, and are the "claimants" as defined by section 766.302(3).

2. Asmi incurred a "birth-related neurological injury" (the injury) as that term is defined in section 766.302(2), on or about November 27, 2018, which was the sole and proximate cause of Asmi's death.

3. At birth, Asmi weighed 3,400 grams.

4. Terrance Carter, M.D., rendered obstetrical services in Asmi's delivery and, at all material times, was a "participating physician" as defined in section 766.302(7).

5. Asmi was born at Winner Palmer Hospital, which is a hospital located in Orlando, Florida, and is the "hospital" as that term is defined in section 766.302(6).

6. Asmi died on December 1, 2018.

7. Petitioners 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

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

9. 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 January 7, 2020, is approved, and the parties are directed to comply with the provisions of the Stipulation and Joint Petition.

2. Petitioners, Heli Patel and Ishan Gajera, as parents and natural guardians of Asmi Gajera, are awarded one hundred thousand dollars (\$100,000.00), to be paid in a lump sum, pursuant to section 766.31(1)(b)1., and a ten thousand dollar (\$10,000.00) death benefit authorized by section 766.31(1)(b)2. Petitioners are also awarded payment of benefits for past expenses as authorized by section 766.31(1)(a), subject to the

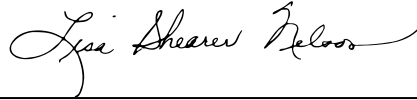
provisions of paragraph 20 of the Petition and Joint Stipulation.

3. NICA will reimburse Richard Bates, Esquire, attorney for Petitioners, an agreed-upon attorney's fee of Twelve Thousand Five Hundred Dollars (\$12,500.00) and expenses of Four Thousand Eight Hundred Twenty-Six Dollars and Seventy-Eight Cents (\$4,826.78), totaling in full Seventeen Thousand Three Hundred Twenty-Six Dollars and Seventy-Eight Cents (\$17,326.78), for services rendered in this proceeding.

4. Upon payment of the award of \$100,000, the death benefit of \$10,000, benefits/expenses as outlined in paragraph 20 of the Joint Petition and Stipulation, and payment of the attorney's fees and costs awarded to Petitioners' counsel, Petitioners' claims shall be deemed fully satisfied and extinguished.

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 24th day of January, 2020, in
Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
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 24th day of January, 2020.

COPIES FURNISHED:
(via certified mail)

Richard W. Bates, Esquire
Morgan & Morgan, P.A.
Suite 1600
20 North Orange Avenue
Orlando, Florida 32801
(eServed)
(Certified Mail No. 7018 3090 0000 2189 3485)

Kenney Shipley, Executive Director
Florida Birth-Related Neurological
Injury Compensation Association
Suite 1
2360 Christopher Place
Tallahassee, Florida 32308
(eServed)
(Certified Mail No. 7018 3090 0000 2189 3492)

Joseph P. Menello, Esquire
Wicker, Smith, O'Hara, McCoy and Ford, P.A.
Suite 1000
390 North Orange Avenue
Orlando, Florida 32801
(eServed)
(Certified Mail No. 7018 3090 0000 2189 3508)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified Mail No. 7018 3090 0000 2189 3515)

Mary C. Mayhew, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)
(Certified Mail No. 7018 3090 0000 2189 3522)

Terrence Carter, M.D.
Suite 103
22 Lake Beauty Drive
Orlando, Florida 32806
(Certified Mail No. 7018 3090 0000 2189 3539)

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).