

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRITTANY QUINLEY and DUSTIN
BROWN, individually and as
natural parents of BRAVE RYLAND
BROWN,

Petitioners,

vs.

Case No. 19-5445N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

SUMMARY FINAL ORDER

This cause came before the undersigned on a Motion for Summary Final Order filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association ("NICA"), on January 7, 2020, to which Petitioners, Brittany Quinley and Dustin Brown, individually and as natural parents of Brave Ryland Brown ("Brave"), a minor, filed no response in opposition.

STATEMENT OF THE ISSUE

The issue to be determined is whether Brave suffered a "birth-related neurological injury," as defined in section 766.302, Florida Statutes (2017).

PRELIMINARY STATEMENT

On October 4, 2019, Petitioners filed a Petition for Determination of Compensability Pursuant to Florida Statute Section 766.301, et seq. ("Petition"), with the Florida Division of Administrative Hearings ("DOAH"), seeking a determination that Brave was not eligible for benefits under the Florida Birth-Related Neurological Injury Compensation Plan ("Plan").

The Petition named Joseph Greenhaw, M.D., as the obstetrician who delivered Brave on September 27, 2017, and Baptist Medical Center South ("Hospital"), as the hospital where Brave was born. DOAH served NICA, Dr. Greenhaw, and the Hospital with copies of the Petition on October 21, 2019, as reflected in the Certified Return Receipts filed on October 21, 2019.

NICA received one extension of time to respond to the Petition. On January 7, 2020, NICA filed a Motion for Entry of Protective Order Regarding Confidential Documents Related to Petitioner's Medical Records. The undersigned granted that motion by separate Order on January 9, 2020.

On January 7, 2020, NICA also filed a Motion for Summary Final Order ("Motion") requesting that the undersigned dismiss the Petition because the claim is not compensable, as Brave's birth weight fell below the statutory threshold of 2,500 grams.

Petitioners' response to the Motion was due by January 14, 2020. Fla. Admin. Code R. 28-106.204. Counsel for Petitioners

informed the undersigned's office that they would not be filing a response. By failing to do so, Petitioners have conceded to the allegations made and the relief sought therein.

The available evidence in this cause is comprised of two confidential medical records, including the Hospital's admission summary and an obstetrical ultrasound report, which Petitioners served on NICA pursuant to section 766.305. They are both attached to NICA's Motion.

All references to the Florida Statutes are to the 2017 version unless otherwise specified. The relevant provisions of chapter 766 have not been amended in any way relevant to this proceeding since 2017.

FINDINGS OF FACT

1. On September 27, 2017, the Hospital admitted Brittany Quinley and she gave birth to a baby boy named Brave.

2. The pre-delivery ultrasound, performed on September 26, 2017, estimated the fetal weight to be 2,539 grams. However, Brave weighed 2,486 grams at the time of his birth the next day.

CONCLUSIONS OF LAW

3. DOAH has jurisdiction over the parties and exclusive jurisdiction over the subject matter of these proceedings pursuant to sections 120.569, 120.57(1), and 766.304, Florida Statutes.

4. 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. NICA administers the Plan. § 766.302(1), Fla. Stat.

5. The injured infant, his or her 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 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.

6. If NICA determines that the alleged injury 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. If NICA disputes the claim, as it does in this case, the dispute must be resolved by the assigned administrative law judge in accordance with chapter 120. §§ 766.304, 766.30, and 766.31, Fla. Stat.

7. In determining whether a claim is compensable, the undersigned must first determine, based on all available evidence, if "the injury claimed is a birth-related neurological injury." § 766.309(1)(a), Fla. Stat.

8. 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.

9. If the administrative law judge determines that the infant meets the statutory weight threshold, sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury, and is rendered permanently and substantially mentally and physically impaired as a result of the injury, a rebuttable presumption arises that the injury is a birth-related neurological injury. § 766.309(1), Fla. Stat.

10. Here, however, the undisputed available evidence establishes that Brave did not weigh at least 2,500 grams at birth, as required by section 766.302(2). This issue is dispositive with respect to compensability.

11. Accordingly, based on the undisputed available evidence, Brave did not sustain a birth-related neurological injury and is not eligible for benefits under the Plan.

DISPOSITION

Based upon the foregoing Findings of Fact and Conclusions of Law, NICA's unopposed Motion for Summary Final Order is granted because Petitioners' claim is not compensable. Petitioners' Petition is dismissed with prejudice.

DONE AND ORDERED this 24th day of January, 2020, in Tallahassee, Leon County, Florida.



ANDREW D. MANKO
Administrative Law Judge
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Filed with the Clerk of the
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this 24th day of January, 2020.

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).