

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTOPHER OLMSTEAD and  
HEENESYS TAMAYO, individually  
and as parents and natural  
guardians of ADRIAN OLMSTEAD, a  
minor,

Petitioners,

vs.

Case No. 19-5651N

FLORIDA BIRTH-RELATED  
NEUROLOGICAL INJURY COMPENSATION  
ASSOCIATION,

Respondent.

\_\_\_\_\_ /

SUMMARY FINAL ORDER

On December 13, 2019, Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), filed a Motion for Summary Final Order (Motion), which is due for consideration. Petitioner filed a Response and Notice of No Objection to Respondent's Motion for Summary Final Order.

STATEMENT OF THE ISSUE

The issue to be determined is whether the infant, Adrian Olmstead (Adrian), suffered a birth-related neurological injury as that term is defined by section 766.302, Florida Statutes (2018).

PRELIMINARY STATEMENT

On October 15, 2019, Christopher Olmstead and Heenesys Tamayo, individually and as parents and natural guardians of Adrian Olmstead (Petitioners), filed a Petition under Protest for Benefits Pursuant to Florida Statute Section 766.301 et seq (Petition). In the Petition, Petitioners acknowledge that the child does not meet the weight requirements for eligibility, but are filing the Petition in an abundance of caution, should it be a necessary precondition to a medical negligence proceeding.

The Petition identifies Dr. John Vann Parker and Dr. Nateya Carrington as providing obstetrical services, with Dr. Carrington present at Adrian's birth. AdventHealth Altamonte Springs, f/k/a Florida Hospital Altamonte (AdventHealth Altamonte Springs), is identified as the hospital where Adrian was born.

The Petition was provided by certified mail to NICA, AdventHealth Altamonte Springs, and Drs. Parker and Carrington. Certified return receipts indicated that they were properly served. On December 13, 2019, NICA filed the Motion, and Petitioners responded, stating they had no objection to the Motion.

The Motion had a document attached to it that appears to be a discharge summary from a hospital, but does not identify the facility from which it was generated. On January 6, 2020, an

Order Requiring Response was issued, advising NICA that without some supplementation, there was no competent evidence upon which findings could be made for a summary final order. That same day, NICA supplemented the record with a certified copy of the child's birth certificate.

All references to Florida Statutes are to the 2018 codification.

#### FINDINGS OF FACT

1. On November 28, 2018, Heenesys Tamayo gave birth to a baby boy, Adrian Olmstead, at AdventHealth Altamonte Springs.

2. Adrian's birth certificate indicates that he weighed five pounds, six ounces at birth, which equates to approximately 2,440 grams.

#### CONCLUSIONS OF LAW

3. The Division of Administrative Hearings (DOAH) has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 766.304, Florida Statutes.

4. The Florida Birth-Related Neurological Injury Compensation Plan (Plan) was established by the Legislature "for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims" related to births occurring on or after January 1, 1989. § 766.303(1), Fla. Stat.

5. An 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. Section 766.305(4) provides that NICA, which administers the Plan, has 45 days from the date that a complete claim is served to file a response to the petition and to submit relevant information regarding whether the injury suffered is a birth-related neurological injury compensable under the Plan.

6. If NICA determines that the alleged injury is a birth-related neurological injury that is compensable under the Plan, it may award compensation to the claimant, provided that the award is approved by an administrative law judge. § 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. Whether an infant has sustained a birth-related neurological injury is determined in accordance with the definition in section 766.302(2), which states:

(2) "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.

8. If the administrative law judge determines that the infant meets the statutory weight threshold and has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury, and finds that as a result of the injury the infant was rendered permanently and substantially mentally and physically impaired, then section 766.309(1) provides that there is a rebuttable presumption that the injury is a birth-related neurological injury.

9. In this case, the evidence presented does not support such a finding. The undisputed evidence is that Adrian weighed approximately 2,440 grams at birth, which is below the threshold weight required by the definition in section 766.302(2). This issue is dispositive with respect to compensability. Based on this finding, Adrian did not sustain a birth-related neurological injury as defined in section 766.302(2), and is not eligible for benefits under the Plan.

#### CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, NICA's Motion for Summary Final Order is granted, and

Petitioners' claim is found to be not compensable. Accordingly, Petitioners' Petition is dismissed with prejudice.

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)

Kenton V. Sands, Esquire  
Sands White and Sands, P.A.  
760 White Street  
Daytona Beach, Florida 32114  
(eServed)  
(Certified Mail No. 7018 3090 0000 2189 4789)

Steven L. Sands, Esquire  
Sands White and Sands, P.A.  
760 White Street  
Daytona Beach, Florida 32114  
(Certified Mail No. 7018 3090 0000 2189 4796)

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 4802)

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 4819)

Mary C. Mayhew, Secretary  
Health Quality Assurance  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 1  
Tallahassee, Florida 32308  
(eServed)  
(Certified Mail No. 7018 3090 0000 2189 4826)

John Vann Parker, M.D.  
Suite 1031  
785 Primera Boulevard  
Lake Mary, Florida 32746  
(Certified Mail No. 7018 3090 0000 2189 4833)

Nateya Carrington, M.D.  
Suite 1031  
785 Primera Boulevard  
Lake Mary, Florida 32746  
(Certified Mail No. 7018 3090 0000 2189 4840)

AdventHealth Altamonte Springs  
Attention: Risk Management  
601 East Altamonte Drive  
Altamonte Springs, Florida 32701  
(Certified Mail No. 7018 3090 0000 2189 3478)

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).