

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LATOYA WRIGHT and AARON LEE, on
behalf of and as parents and
natural guardians of ZAKEEM
CARTER LEE, a deceased minor,

Petitioners,

vs.

Case No. 19-5910N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent.

_____ /

SUMMARY FINAL ORDER

On January 2, 2020, Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), filed a Motion for Summary Final Order, which is due for consideration. The Motion for Summary Final Order relies upon medical records from Holmes Regional Medical Center (Holmes Regional). To date, no response to the Motion for Summary Final Order has been filed.

STATEMENT OF THE ISSUE

The issue to be determined is whether the infant, Zakeem Carter Lee (Zakeem), suffered a birth-related neurological injury as that term is defined in section 766.302(2), Florida Statutes (2018).

PRELIMINARY STATEMENT

On September 30, 2019, Petitioners, Latoya Wright and Aaron Lee, on behalf of and as parents and natural guardians of Zakeem, filed a Petition for Benefits Pursuant to Florida Statutes 766.301 et seq. (Petition). The Petition was incomplete, and Petitioner refiled the Petition with the necessary documents on November 5, 2019.

The Petition identifies Anette Ferrell, CNM, as the person providing obstetrical services at the birth of the child. The hospital is identified as Holmes Regional. On November 15, 2019, NICA, Ms. Ferrell, and Holmes Regional were served with the Petition by certified mail, and certified mail receipts were received indicating that both NICA and Ms. Ferrell were served.

On January 2, 2019, NICA moved for Summary Final Order, based on the birth weight of the infant. Although Florida Administrative Code Rule 28-106.204 allows for seven days in which to file a response to any motion, to date, Petitioners have not filed a response to the Motion.

FINDINGS OF FACT

1. Zakeem was born on December 25, 2018, at Holmes Regional. He passed away shortly after birth.
2. Zakeem weighed 2,425 grams at birth.

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 Zakeem weighed 2,425 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, Zakeem 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
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Filed with the Clerk of the
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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).