

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

REBECCA RIVERA AND HECTOR RIVERA,
INDIVIDUALLY AND AS NATURAL PARENTS
AND GUARDIANS OF EVERLEIGH RIVERA, A
MINOR,

Petitioners,

Case No. 19-6417N

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

ADVENTIST HEALTH SYSTEM/SUNBELT,
INC., D/B/A WINTER PARK MEMORIAL
HOSPITAL; STEVEN L. DUKES, M.D., AND
WOMEN'S CARE FLORIDA,

Intervenors.

FINAL ORDER

On April 2, 2020, Petitioners Rebecca Rivera and Hector Rivera, Individually and as Natural Parents and Guardians of Everleigh Rivera, a Minor, Respondent Florida Birth-Related Neurological Injury Compensation Association, and Intervenors Adventist Health System/Sunbelt Inc., d/b/a Winter Park Memorial Hospital, Steven L. Dukes, M.D., and Women's Care Florida, 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"). The Parties

jointly seek the entry of an order approving the resolution of the claim for benefits, consistent with the provisions of chapter 766, Florida Statutes.¹

FINDINGS OF FACT

Based upon the Stipulation and Joint Petition, the undersigned makes the following findings of fact:

1. Rebecca Rivera and Hector Rivera (“Petitioners”) are the parents and legal guardians of Everleigh Rivera (“Everleigh”) and are the “claimants,” as defined in section 766.302(3), Florida Statutes.

2. Everleigh suffered a “birth-related neurological injury” (“Injury”), as defined in section 766.302(2), on or about February 16, 2018. The Injury solely and proximately caused Everleigh’s current medical condition.

3. At birth, Everleigh weighed 3400 grams.

4. Steven Dukes, M.D., rendered obstetrical services in the delivery of Everleigh and, at all material times, was a “participating physician,” as defined in section 766.302(7).

5. Adventist Health System/Sunbelt, Inc., d/b/a Winter Park Memorial Hospital (“Advent Health Winter Park”), located in Orlando, Florida, is the “hospital,” as defined in section 766.302(6), where Everleigh was born.

6. On November 22, 2019, Petitioners filed a petition seeking compensation from the Florida Birth-Related Neurological Injury Compensation Association (“NICA”), pursuant to section 766.305, Florida Statutes. The Petition is incorporated herein by reference in its entirety, including all attachments. Any reference to NICA made within that document encompasses, where appropriate, the Florida Birth-Related Neurological Injury Compensation Plan (“Plan”).

¹ All references to the Florida Statutes are to the 2017 version. The relevant provisions of chapter 766 have not been amended in any way material to this proceeding since 2017.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings (“DOAH”) has jurisdiction over the parties and exclusive jurisdiction over the subject matter of these proceedings pursuant to section 766.304, Florida Statutes.

8. Pursuant to section 766.305, the presiding administrative law judge may approve the settlement of any claim where NICA determines that the injury is compensable. This is such a case.

CONCLUSION

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

ORDERED:

1. The Stipulation and Joint Petition, filed on April 2, 2020, is approved and the parties are directed to comply with the provisions thereof.

2. Petitioners, Rebecca Rivera and Hector Rivera, as the parents and legal guardians of Everleigh Rivera, are awarded One Hundred Thousand Dollars (\$100,000.00), to be paid to Petitioners as periodic payments, pursuant to section 766.31(1)(b), Florida Statutes. Petitioners are also awarded payment of benefits as authorized in section 766.31(1)(a), subject to the provisions of paragraph 19 of the parties’ Stipulation and Joint Petition.

3. NICA will reimburse Hector More’, Esquire, counsel for Petitioners, an agreed-upon attorney’s fee of Twelve Thousand Five Hundred Dollars (\$12,500.00) and expenses of Four Thousand Two Hundred Twenty-Six Dollars and Thirty Cents (\$4,226.30), totaling Sixteen Thousand Seven Hundred Twenty-Six Dollars and Thirty Cents (\$16,726.30) in full, for services rendered in the filing of this claim.

4. Upon the payment of the award of \$100,000.00, past benefits/expenses, and the total attorney’s fees awarded to Petitioners’ counsel, Petitioners’ claims alleged in their Petition shall be deemed fully satisfied and

extinguished, except for NICA's continuing obligation to pay future expenses as incurred, as required by section 766.31(2).

5. DOAH 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 13th day of April, 2020, in Tallahassee, Leon County, Florida.



ANDREW D. MANKO
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 13th day of April, 2020.

COPIES FURNISHED:
(via certified mail)

Kenney Shipley, Executive Director
Florida Birth-Related Neurological
Injury Compensation Association
Suite 1
2360 Christopher Place
Tallahassee, Florida 32308
(eServed)
(Certified No. 7019 2280 0000 5623 6342)

Hector Antonio More', Esquire
Morgan and Morgan, P.A.
16th Floor
20 North Orange Avenue
Orlando, Florida 32801
(eServed)
(Certified No. 7019 2280 0000 5623 6359)

Travase Lloyd Erickson, Esquire
Saalfield Shad, PA
Suite 400
245 Riverside Avenue
Jacksonville, Florida 32202
(eServed)
(Certified No. 7019 2280 0000 5623 6366)

Gabrielle Osborne, Esquire
Beytin, McLaughlin, McLaughlin,
O'Hara, Kinman & Bocchino, P.A.
1706 East Eleventh Avenue
Tampa, Florida 33605
(eServed)
(Certified No. 7019 2280 0000 5623 6373)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified No. 7019 2280 0000 5623 6380)

Mary C. Mayhew, Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)
(Certified No. 7019 2280 0000 5623 6397)

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).