

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMIE PARMENTER AND MARK  
PARMENTER, INDIVIDUALLY AND AS  
NATURAL PARENTS OF ABIGAIL  
PARMENTER, A MINOR,

Petitioners,

Case No. 20-4832N

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent.

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SUMMARY FINAL ORDER OF DISMISSAL

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 November 6, 2020, to which Petitioners, Jamie Parmenter and Mark Parmenter, individually and as natural parents of Abigail Parmenter (“Abigail”), a minor, filed no response.

STATEMENT OF THE CASE

The issue to be determined is whether Abigail suffered a “birth-related neurological injury,” as defined in section 766.302, Florida Statutes (2018).<sup>1</sup>

PRELIMINARY STATEMENT

On October 19, 2020, 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”),

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<sup>1</sup> All references to the Florida Statutes are to the 2018 version. The provisions of chapter 766, Florida Statutes, have not been amended in any way relevant to this proceeding since 2018.

primarily seeking a determination that Abigail is eligible for benefits under the Florida Birth-Related Neurological Injury Compensation Plan (“Plan”).

The Petition named Sharon Desmarais, M.D., as the obstetrician who delivered Abigail on July 24, 2018, with the assistance of Brittany Kelly, A.R.N.P., and Baptist Medical Center South (“Hospital”), as the hospital where Abigail was born. As reflected in the Certified Return Receipts, DOAH sent NICA, Dr. Desmarais, Ms. Kelly, and the Hospital copies of the Petition via Certified U.S. mail on November 5, 2020.

On November 6, 2020, NICA filed a Motion for Summary Final Order (“Motion”) requesting that the undersigned dismiss the Petition on grounds that the claim is not compensable because Abigail’s birth weight fell below the statutory threshold of 2,500 grams.

Pursuant to Florida Administrative Code Rule 28-106.204, Petitioners’ response to the Motion was due by November 13, 2020. Petitioners have not filed a response to the Motion. By failing to do so, Petitioners have conceded to the allegations made and the relief sought therein.

The available evidence in the cause is comprised of Abigail’s birth certificate, which was attached to the Motion.

#### FINDINGS OF FACT

1. On July 24, 2018, Jamie Parmenter gave birth to a baby girl named Abigail at the Hospital.

2. The birth certificate showed that Abigail’s weight at the time of her birth was 2 pounds, 5 ounces, which equates to 1,048 grams. *See, e.g.*, Metric Conversions, available at <https://www.metric-conversions.org/weight/pounds-to-grams.htm> (last visited Nov. 30, 2020).

### 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.

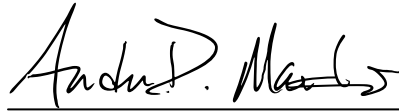
10. Here, however, the undisputed available evidence establishes that Abigail did not weigh at least 2,500 grams at birth, as required to prove a compensable “birth-related neurological injury” under section 766.302(2).

11. Accordingly, Abigail did not suffer a birth-related neurological injury and is, therefore, not eligible for benefits under the Plan.

#### CONCLUSION

Based on 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 1st day of December, 2020, in Tallahassee, Leon  
County, Florida.



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ANDREW D. MANKO  
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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).