

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DON MICHEL AND MARIE PETIT HOMME,
AS PARENTS AND NATURAL GUARDIANS OF
AMBER MICHEL, A MINOR,

Petitioners,

vs.

Case No. 21-0949N

FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

FLORIDA HEALTH SCIENCES CENTER, INC.,
D/B/A TAMPA GENERAL HOSPITAL; KATIE E.
PETERSON, APRN, CNM; KARI ZINKOVICH,
APRN, CNM; M & D CARE, INC., D/B/A
WOMEN'S HEALTH CARE; AND UNIVERSITY
OF SOUTH FLORIDA BOARD OF TRUSTEES,

Intervenors.

_____ /

FINAL ORDER APPROVING STIPULATION

On September 15, 2021, Petitioners and Respondent 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). Petitioners and the Florida Birth-Related Neurological Injury Compensation Association (NICA) seek entry of an order approving the resolution of the claim for benefits filed in accordance with the provisions of chapter 766. The Stipulation and Joint Petition does not mention Intervenors, and does not make a representation whether the Intervenors agree with or oppose the approval of the Stipulation and Joint Petition. However, Intervenors did not oppose the entry of the Partial

Summary Final Order issued July 29, 2021, and have not filed a response opposing the Stipulation and Joint Petition within the time-frame permitted by Florida Administrative Code Rule 28-106.204.

PRELIMINARY STATEMENT

On March 15, 2021, Petitioners, Don Michel and Marie Petit Homme, as parents and natural guardians of Amber Michel (Amber), filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. (Petition) with the Florida Division of Administrative Hearings (DOAH). Petitioners identified Kristen Turner, M.D., as the physician providing obstetrical services, and Tampa General Hospital as the hospital where Amber was born. NICA, Dr. Turner, and Tampa General Hospital were served copies of the Petition by certified mail, and certified mail receipts indicate that all parties received the Petition. The Petition does not challenge the notice provided to Petitioners.

Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital, as well as Katie Peterson, APRN, CNM; Kari Zinkovich, APRN, CNM; M&D Care, Inc., d/b/a Women's Health Care; and University of South Florida Board of Trustees all filed motions to intervene, which were granted by Orders dated April 13 and 23, 2021.

On June 15, 2021, NICA responded to the Petition, stating that, based upon the opinions of its experts, Amber had suffered a birth-related neurological injury and that her injury was compensable under the NICA Plan. NICA requested a hearing on the issue of compensability, and on June 16, 2021, an Order was issued directing the parties to provide available dates for conducting a hearing and an estimate regarding how long the hearing would take.

On July 9, 2021, NICA filed a Status Report indicating that the parties did not believe that a hearing was necessary, and that NICA would be filing an Unopposed Motion for Summary Final Order, which it did on July 12, 2021. A Partial Summary Final Order was issued on July 29, 2021, finding that the child's injury was compensable, and directing the parties to resolve, subject to the undersigned's approval, the amount and manner of payment of an award to Petitioners, or to file a joint status report advising that a hearing would be required. After requesting and receiving a short extension of time, the Stipulation and Joint Petition was filed.

FINDINGS OF FACT

The Partial Summary Final Order issued July 29, 2021, contained Findings of Fact, which are incorporated by reference. In addition, it is found:

1. Don Michel and Marie Petit Homme are the parents and legal guardians of Amber, and are the Claimants as that term is defined in section 766.302(3).

2. Amber incurred a "birth-related neurological injury" as that term is defined in section 766.302(2), on or about February 23, 2019, which was the sole and proximate cause of her injury.

3. Florida Health Services, Inc., d/b/a Tampa General Hospital, is a hospital located in Tampa, Florida, and is the "hospital" as that term is defined in section 766.302(6) where Amber was born.

4. Petitioners filed a petition to initiate this claim pursuant to section 766.305, and that Petition is incorporated by reference in its entirety, including all attachments. Any reference made in this document to NICA encompasses, where appropriate, the Florida Birth-Related Neurological Injury Compensation Plan (the Plan).

CONCLUSIONS OF LAW

5. DOAH has jurisdiction over the subject matter and the parties to this proceeding pursuant to section 766.301.

6. Section 766.305(7) requires the presiding administrative law judge to approve the settlement of any claim where NICA determines that the injury is compensable.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law, it is

ORDERED:

1. The Stipulation and Joint Petition filed September 15, 2021, is approved. The parties are directed to comply with the provisions of the Stipulation and Joint Petition.

2. Petitioners, Don Michel and Marie Petit Homme, as the parents and natural guardians of Amber Michel, are awarded Two Hundred and Fifty Thousand Dollars (\$250,000) to be paid to the parents as a lump sum or periodic payments, as authorized by section 766.31(1)(b).

3. Petitioners are also awarded payment of past benefits and expenses authorized by section 766.31(1)(a), subject to the provisions of paragraph 19 of the Stipulation and Joint Petition.


4. NICA will pay future expenses as incurred, as authorized by section 766.31(2), and will resolve any dispute with respect to the payment of future expenses as set forth in paragraph 22 of the Stipulation and Joint Petition.

5. NICA will resolve any Medicaid liens.

6. NICA will reimburse Scott Borders, Esquire, and the law firm of Morgan & Morgan, P.A., attorneys for Petitioners, an agreed upon attorney's fee of Ten Thousand Dollars (\$10,000) and expenses of Four Thousand Nine Hundred and Twenty-Two Dollars and ninety cents (\$4,922.90), totaling Fourteen Thousand Nine Hundred Twenty-Two Dollars and ninety cents (\$14,922.90), in full, for services rendered in the filing of this claim.

7. 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 23rd day of September, 2021, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of September, 2021.

COPIES FURNISHED:
(via certified mail)

Amie Rice, Investigation Manager
Consumer Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275
(Certified No. 7020 0090 0000 8715 2674)

Kim Kellum, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified No. 7020 2450 0002 1970 6319)

Scott Borders, Esquire
Morgan and Morgan, P.A.
One Tampa Center
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
(Certified No. 7020 2450 0002 1970 6333)

Simone Marstiller, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(Certified No. 7020 0090 0000 8715 2667)

Thomas M. Hoeler, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified No. 7020 2450 0002 1970 6326)

Kenney Shipley, Executive Director
Florida Birth-Related Neurological
Injury Compensation Association
Suite 1
2360 Christopher Place
Tallahassee, Florida 32308
(Certified No. 7020 2450 0002 1970 6340)

Andrew R. Hudson, Esquire
La Cava Jacobson & Goodis, P.A.
501 East Kennedy Boulevard
Tampa, Florida 33602
(Certified No. 7020 2450 0002 1970 6357)

Gabrielle Osborne, Esquire
Beytin, McLaughlin, McLaughlin, O'Hara,
Kinman & Bocchino, P.A.
1706 East Eleventh Avenue
Tampa, Florida 33605
(Certified No. 7020 2450 0002 1970 6364)

Carissa Brumby, Esquire
Beytin, McLaughlin, McLaughlin, O'Hara,
Kinman & Bocchino, P.A.
1706 East Eleventh Avenue
Tampa, Florida 33605
(Certified No. 7020 2450 0002 1970 6371)

Elizabeth A. Myers, Esquire
Smith Bigman Brock, P.A.
444 Seabreeze Boulevard
Daytona Beach, Florida 32118
(Certified No. 7020 2450 0002 1970 6388)

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).