

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

THOMAS EISEL AND LINDSAY EISEL, ON
BEHALF OF AND AS PARENTS AND
NATURAL GUARDIANS OF NATHANIEL
EISEL, A MINOR,

Petitioners,

vs.

Case No. 21-1311N

FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,

Respondent.

_____ /

SUMMARY FINAL ORDER

On April 28, 2021, Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), filed a Motion for Summary Final Order asserting that the injury to Petitioners' child is not compensable because the physicians providing obstetrical services were not participating physicians. After review of the documents submitted and the response by Petitioners, Respondent's Motion is granted.

STATEMENT OF THE ISSUE

The issue for determination is whether Nathaniel Eisel (Nathaniel or the child), the minor child of Thomas Eisel and Lindsay Eisel, is entitled to compensation from Respondent based on a birth-related neurological injury.

PRELIMINARY STATEMENT

On April 12, 2021, Thomas Eisel and Lindsay Eisel, as Nathaniel's parents and natural guardians, filed a Petition for Benefits Filed Pursuant to Florida Statute Section 766.301 et seq. (the Petition). The Petition identified

Bhupendrakum Patel, M.D., and Brandon M. Kuchta, D.O., as the physicians providing obstetrical services, and Osceola Medical Center in Kissimmee, Florida, as the hospital where Nathaniel was born. On April 20, 2021, NICA, Osceola Medical Center, and both physicians were served with copies of the Petition by certified mail.

On April 28, 2021, NICA filed a Motion for Summary Final Order. Petitioners did not file a response within the time frame specified by Florida Administrative Code Rule 28-106.204. On May 18, 2021, an Order to Show Cause was issued, directing Petitioners to file a response no later than May 25, 2021, or it would be assumed that Petitioners do not object to the issuance of a Summary Final Order. Petitioners filed a response on June 2, 2021, stating that Petitioners do not object to the entry of a final order finding that the claim is not compensable under NICA due the providers not being participants under the NICA Plan.

FINDINGS OF FACT

Based on the allegations in the Petition and the affidavit submitted in support of the Motion for Summary Final Order, the following facts are found:

1. Nathaniel was born on July 19, 2017. According to the Petition, Bhupendrakum Patel, M.D., and Brandon M. Kuchta, D.O., were the physicians providing obstetrical services.
2. NICA alleges that neither physician was a participating physician at the time of the injury to the minor child. NICA supports its position with an affidavit signed by NICA's records custodian, which states that Dr. Patel had not paid the required assessment for participation in the Plan and was not exempt from payment of the assessment. The affidavit also states that NICA's physician database contains no entries for Brandon M. Kuchta, D.O.

3. Petitioners do not dispute NICA's assertion that neither physician was a participating physician in the NICA program, and it is found that the two physicians did not participate in the Plan for the year in which Nathaniel was born.

CONCLUSIONS OF LAW

4. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

5. The Florida Birth-Related Neurological Injury Compensation Plan (the Plan) was established by the Florida 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.

6. An injured child, his or her parents, or other specified individuals may seek compensation under the Plan by filing a claim for compensation with the Division of Administrative Hearings. §§ 766.302(3), 766.303(2), and 766.305, Fla. Stat.

7. After reviewing the claim and documents specified in section 766.305(1), if NICA determines that the alleged injury is a birth-related neurological injury that is compensable under the Plan, it may award compensation, provided the award is approved by the assigned administrative law judge. However, if NICA disputes the claim, as it does here, the dispute must be resolved by an administrative law judge in accordance with chapter 120, Florida Statutes. §§ 766.305(7), 766.304, 766.30, and 766.31, Fla. Stat.

8. In order for the claim to be compensable, section 766.309 provides that certain factors must be demonstrated, stating:

(1) The administrative law judge shall make the following determinations based upon all available evidence:

(a) Whether the injury claimed is a birth-related neurological injury

(b) *Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or resuscitation in the immediate postdelivery period.*

* * *

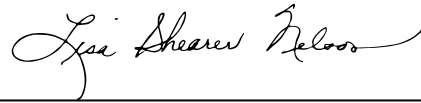
(2) If the administrative law judge determines that the injury alleged is not a birth-related neurological injury *or that the obstetrical services were not delivered by a participating physician at the birth, she or he shall enter an order* (emphasis added).

9. The Petition alleges Dr. Patel and Dr. Kuchta provided obstetrical services. The undisputed evidence indicates that neither physician was a participant in the Plan at the time of Nathaniel's birth. Because the physicians were not participating physicians, the claim is not compensable under the Plan.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law above, Petitioners' claim is not compensable under the Plan, and the Petition is dismissed with prejudice.

DONE AND ORDERED this 9th day of June, 2021, in Tallahassee, Leon
County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of June, 2021.

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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).