

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

LILLIAN HENDERSON AND NICKY RAINES,  
ON BEHALF OF AND AS PARENTS AND  
NATURAL GUARDIANS OF JACK RAINES, A  
MINOR,

Case No. 21-1312N

Petitioners,

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

ANTHONY B. AGRIOS, M.D. AND ALL  
ABOUT WOMEN OBSTETRICS AND  
GYNECOLOGY, LLC,

Intervenors.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon the Motion for Summary Final Order filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), on September 27, 2021.

STATEMENT OF THE CASE

On April 13, 2021, Petitioners, Lillian Henderson and Nicky Raines, on behalf of and as parents and natural guardians of Jack Raines (Jack), a minor, filed a Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. (Petition) with the Division of Administrative Hearings (DOAH) for a determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

The Petition identified Anthony Agrios, M.D., as the physician who provided obstetric services at the birth of Jack on October 24, 2019, at North Florida Regional Medical Center, located in Alachua County, Florida. The Petition also alleges, *inter alia*, that Jack does not appear to be “permanently and substantially mentally and physically impaired,” and thus would not be qualified for NICA benefits.

DOAH served Dr. Agrios, North Florida Regional Medical Center, and NICA with a copy of the Petition on April 20, 2021.

On June 4, 2021, NICA filed a Response to Petition for Benefits, which stated its determination that the instant claim is not compensable as the injury does not meet the definition of a “birth-related neurological injury,” as defined in section 766.302(2), Florida Statutes (2019). On August 3, 2021, the parties filed a Joint Notice of Compliance, which stated that the parties did not contest the compensability determination that NICA reached in its Response to Petition for Benefits.

On September 8, 2021, the undersigned conducted a telephonic status conference to determine the need for a hearing, if any, and if a hearing is needed, when the parties will be prepared to proceed to a hearing, the issues in dispute, the estimate of time required for hearing, and the choice of venue. The parties indicated that a hearing was not necessary.

On September 27, 2021, NICA filed its Motion for Summary Final Order (Motion). Petitioners did not file a response to the Motion within the seven-day time period for a response set forth in Florida Administrative Code Rule 28-106.204(4). The Motion further indicates that Petitioners and Intervenors do not intend to oppose the Motion.

## FINDINGS OF FACT

1. Jack was born on October 24, 2019, at North Florida Regional Medical Center, located in Alachua County, Florida.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Jack. In a medical report dated April 26, 2021, Dr. Willis summarized his findings and opined, in pertinent part, as follows:

In summary, delivery was complicated by a failed forceps delivery, which resulted in a depressed skull fracture with underlying brain injury. EEG was consistent with seizure activity occurring from the area of brain injury underlying the skull fracture. MRI was also consistent with brain injury.

There was an obstetrical event that resulted in mechanical trauma to the baby's brain during delivery. The head trauma resulted in a skull fracture to the underlying brain tissue. I am unable to comment about the severity of the injury.

3. NICA retained Raj D. Seth, M.D. (Dr. Seth), a medical expert specializing in pediatric neurology, to examine Jack and to review his medical records. Dr. Seth examined Jack on June 1, 2021. In a medical report dated June 1, 2021, Dr. Seth summarized his examination of Jack and opined, in pertinent part, as follows:

In SUMMARY, Jack Raines's neurological examination reveals evidence of expressive language delay, with good comprehension and apparent normal processing of language. His neurologic examination is normal for age.

Much of Jack's neonatal course was detailed in the history of present illness. He was born after a failed forceps delivery with a complication of a left parietal depressed fracture requiring neurosurgical intervention. He presented with neonatal seizures which responded well to Keppra and he has been successfully weaned off Keppra. CT head and MRI

scans indicated a left parietal depressed fracture with changes in the left basal ganglia. He does not have neurological deficits as of this examination and his development is normal.

In response to your question:

“Does the child suffer from both a substantial mental impairment and a substantial physical impairment?”

As of the time of this examination and evaluation Jack’s case indicates that he does not suffer from either substantial mental or substantial physical impairment.

4. A review of the file in this case reveals that there have been no expert opinions filed that are contrary to Dr. Seth’s opinion that Jack should not be considered for inclusion in the NICA program. Dr. Seth’s opinion is credited.

#### CONCLUSIONS OF LAW

5. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

6. The 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.

7. The injured infant, her or his 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, which administers the Plan, 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.

8. If NICA determines that the injury alleged in a claim 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, on the other hand, NICA disputes the claim, as it has in the instant case, the dispute must be resolved by the assigned administrative law judge in accordance with the provisions of chapter 120, Florida Statutes. §§ 766.304, 766.309, and 766.31, Fla. Stat.

9. In discharging this responsibility, the administrative law judge must make the following determination based upon the available evidence:

(a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the administrative law judge, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.303(2).

(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 in a hospital.

§ 766.309(1), Fla. Stat. An award may be sustained only if the administrative law judge concludes that the “infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at birth.” § 766.31(1), Fla. Stat.

10. Section 766.302(2) defines the term “birth-related neurological injury” 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.

11. To be compensable under the Plan, there must have been an obstetrical event which resulted in loss of oxygen to the baby’s brain during labor, delivery, or resuscitation in the immediate post-delivery period resulting in a permanent and substantial mental impairment and a permanent and substantial physical impairment, inasmuch as both are required to establish compensability. *Fla. Birth-Related Neurological Injury Comp. Ass’n v. Div. of Admin. Hearings*, 686 So. 2d 1349 (Fla. 1997).

12. The evidence, which the parties do not refute, established that Jack did not suffer a birth-related neurological injury under the definition of section 766.302(2). Therefore, Jack is not eligible for benefits under the Plan.

#### CONCLUSION

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

ORDERED that:

The Petition filed by Lillian Henderson and Nicky Raines, on behalf of and as parents and natural guardians of Jack Raines, a minor, is DISMISSED with prejudice.

DONE AND ORDERED this 14th day of October, 2021, in Tallahassee, Leon County, Florida.



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ROBERT J. TELFER III  
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).