

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

LYNDSEY N. HAND, INDIVIDUALLY, AND  
DAVIN W. HAND, INDIVIDUALLY, AND ON  
BEHALF OF EVANGELINE JOELLE HAND, A  
MINOR,

Petitioners,

vs.

Case No. 21-2517N

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

CRESTVIEW HOSPITAL CORPORATION,  
LLC, D/B/A NORTH OKALOOSA MEDICAL  
CENTER,

Intervenor.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause came on for consideration upon the Unopposed Motion for Summary Final Order (Motion) filed by Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), on January 20, 2022.

STATEMENT OF THE CASE

On August 16, 2021, Petitioners, Lyndsey N. Hand and Davin W. Hand, on behalf of and as parents and natural guardians of Evangeline Joelle Hand (Evangeline), 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 Janet Hanby, M.D., as the physician who provided obstetric services at the birth of Evangeline on August 18, 2016, at Crestview Hospital Corporation, d/b/a North Okaloosa Medical Center (North Okaloosa Medical Center), located in Okaloosa County, Florida.

DOAH served Dr. Hanby, North Okaloosa Medical Center, and NICA with a copy of the Petition on August 20, 2021. On September 7, 2021, the undersigned entered an Order Granting Petition for Leave to Intervene, allowing North Okaloosa Medical Center to intervene in this matter.

On October 15, 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 November 22, 2021, the parties filed an Updated Status Report, which stated that the parties did not contest the compensability determination that NICA reached in its Response to Petition for Benefits.

On January 20, 2022, NICA filed its Motion. The Motion reflects that Petitioners and Intervenor do not oppose the Motion or the relief it requests.

#### FINDINGS OF FACT

1. Evangeline was born on August 18, 2016, at North Okaloosa Medical Center, located in Okaloosa County, Florida.

2. Donald Willis, M.D. (Dr. Willis), was requested by NICA to review the medical records for Evangeline. In a medical report dated August 30, 2021, Dr. Willis summarized his findings and opined, in pertinent part, as follows:

In summary, pregnancy was complicated by premature and prolonged rupture of the membrane. There was no apparent fetal distress in labor. Delivery was by spontaneous vaginal birth. The

baby was vigorous at birth and did not require resuscitation. Apgar scores were 8/9. The baby was stable and remained in the room with the mother after delivery until hypoglycemia was noted about 2 hours after birth.

There was no apparent obstetrical event that resulted in loss of oxygen or mechanical trauma to the baby's brain or spinal cord during labor, delivery or resuscitation in the immediate post-delivery period.

3. NICA retained Michael Duchowny, M.D. (Dr. Duchowny), a medical expert specializing in pediatric neurology, to examine Evangeline and to review her medical records. Dr. Duchowny examined Evangeline on October 6, 2021. In a medical report dated October 11, 2021, Dr. Duchowny summarized his examination of Evangeline and opined, in pertinent part, as follows:

In summary, Evangeline's examination reveals evidence of spastic diparetic cerebral palsy that is affecting strength and gait. In all likelihood, lower limb spastic weakness is responsible for her fatigue and muscle spasm. In contrast, Evangeline's cognitive abilities are functioning at age level across all domains.

Review of the medical records reveals that Evangeline was born at North Okaloosa Medical Center at 34.6 weeks gestation after a pregnancy complicated by oligohydramnios. Maternal membranes ruptured at home 41 hours prior to delivery, and her mother evidenced a fever to 100.7 degrees and leukocytosis. The electronic fetal heart rate was documented to be 180.

Evangeline weighed 3125 grams at birth (6 pounds 14 ounces) and had Apgar scores of 8 and 9 at one and five minutes. Low blood sugars were treated with D10W. Placental pathology revealed acute subchorionitis with extension into chorionic villi, acute vasculitis and funisitis of the umbilical cord,

and acute chorioamnionitis of fetal membranes. Following hospital discharge, Evangeline was admitted to Sacred Heart Med Cntr [sic] with pneumonia and rule out sepsis; She received 3 days of antibiotics and was again discharged.

While Evangeline's diagnosis of cerebral palsy is confirmed on today's evaluation, the evaluation does not provide evidence of a substantial mental impairment. I am therefore not recommending consideration for inclusion in the NICA program.

4. A review of the file in this case reveals that there have been no expert opinions filed that are contrary to the opinion of Dr. Willis that Evangeline did not suffer an injury that meets the definition of a birth-related neurological injury under section 766.302(2). Dr. Willis's opinion is credited. There are no expert opinions filed that are contrary to Dr. Duchowny's opinion that Evangeline should not be considered for inclusion in the NICA program. Dr. Duchowny'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 or a spinal cord injury 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 Evangeline did not suffer a birth-related neurological injury under the definition of section 766.302(2). Therefore, Evangeline 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 Lyndsey N. Hand and Davin W. Hand, on behalf of and as parents and natural guardians of Evangeline Joelle Hand, a minor, is dismissed with prejudice.

DONE AND ORDERED this 27th day of January, 2022, in Tallahassee, Leon County, Florida.



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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).