

**STATE OF FLORIDA**  
**DIVISION OF ADMINISTRATIVE HEARINGS**

ASHLEY SHAHID AND JUSTIN SHAHID, ON  
BEHALF OF AND AS PARENTS AND  
NATURAL GUARDIANS OF MALACHI SHAHID,  
A MINOR,

Case No. 21-2669N

Petitioners,

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent.

\_\_\_\_\_ /

SUMMARY FINAL ORDER OF DISMISSAL

This matter came before the undersigned on Respondent's Motion for Summary Final Order (Respondent's Motion), filed October 4, 2021. Petitioner did not file a response in opposition.

STATEMENT OF THE CASE

On August 26, 2021, Petitioners 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 named Mehmet R. Genc, M.D., Ph.D., and Sarah Cappleman, M.D., as the physicians who provided obstetric services for the birth of Malachi Shahid (Malachi) at UF Health Shands at the University of Florida (UF Shands) in Gainesville, Florida, on October 27, 2018.

On September 8, 2021, DOAH mailed a copy of the Petition to Respondent, Dr. Genc, Dr. Cappleman, and UF Shands via certified mail. Respondent was served with the same on September 14, 2021.

On October 4, 2021, Respondent filed Respondent's Motion, requesting that a summary final order be entered finding that the claim is not compensable because Malachi did not meet the requisite minimum statutory birth weight as required by section 766.302, Florida Statutes. Petitioners did not file a response to Respondent's Motion.

#### FINDINGS OF FACT

1. Malachi was born on August 26, 2021, at UF Shands in Gainesville, Florida. He was a single gestation.
2. The unrefuted medical records provided by Petitioners to Respondent, pursuant to section 766.305(3), document that Malachi's birth weight was 1,500 grams.

#### CONCLUSIONS OF LAW

3. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.
4. The Plan was established by the 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.
5. 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. Respondent, 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.

6. Respondent has determined that Petitioners do not have a claim that is compensable under the Plan and has filed a Motion for Summary Final Order, requesting that an order be entered finding that the claim is not compensable.

7. In ruling on Respondent’s Motion, the administrative law judge (ALJ) must make the following threshold 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. 766.302(2).

§ 766.309(1), 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.

9. If the ALJ determines that the injury is not a birth-related neurological injury, he or she is required to enter an order and immediately provide a copy to the parties. § 766.309(2), Fla. Stat.

10. The evidence, which is not refuted, establishes that Malachi was a single gestation and did not weigh at least 2,500 grams at birth. Thus, Malachi did not sustain a birth-related neurological injury because he did not meet the minimum statutory weight. Accordingly, Petitioners' claim for benefits is not compensable under the Plan.

CONCLUSION

Based on the Findings of Fact and the Conclusions of Law, it is ORDERED that the Petition is dismissed with prejudice.

DONE AND ORDERED this 21st day of October, 2021, in Tallahassee, Leon County, Florida.



---

TODD P. RESAVAGE  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of October, 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. 7021 1970 0000 4860 9059)

Kim Kellum, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
(Certified No. 7021 1970 0000 4860 9042)

Grant A. Kuvin, Esquire  
Morgan & Morgan, P.A.  
76 South Laura Street, Suite 1100  
Jacksonville, Florida 32202  
(Certified No. 7021 1970 0000 4860 8960)

Sarah Cappleman, M.D.  
Suite 200  
235 East Princeton Street  
Orlando, Florida 32804  
(Certified No. 7021 1970 0000 4860 8953)

University of Florida Shands Hospital  
Attention: Risk Management  
1600 Southwest Archer Road  
Gainesville, Florida 32608  
(Certified No. 7021 1970 0000 4860 8946)

Simone Marstiller, Secretary  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 1  
Tallahassee, Florida 32308  
(Certified No. 7021 1970 0000 4860 9011)

Thomas M. Hoeler, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308  
(Certified No. )  
(Certified No. 7021 1970 0000 4860 9028)

Kenney Shipley, Executive Director  
Florida Birth-Related Neurological  
Injury Compensation Association  
Post Office Box 14567  
Tallahassee, Florida 32317  
(Certified No. 7021 1970 0000 4860 9035)

Mehmet R. Genc, M.D., PH.D.  
UF Health Women's Center  
4th Floor  
1549 Gale Lemerand Drive  
Gainesville, Florida 32610-3008  
(Certified No. 7021 1970 0000 4860 8939)

### 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).