

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

JAMIE HART O/B/O PRINCESS HART, A
DECEASED MINOR,

Petitioner,

Case No. 21-2886N

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 27, 2021. Petitioner did not file a response in opposition.

STATEMENT OF THE CASE

On September 22, 2021, Petitioner filed a Petition, Under Protest, 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 Alfredo Nova, M.D., as the physician who provided obstetric services for the birth of Princess Hart (Princess) at Tallahassee Memorial HealthCare (TMH) in Tallahassee, Florida, on January 12, 2021.

On September 22, 2021, DOAH mailed a copy of the Petition to Respondent, Dr. Nova, and TMH via certified mail. Respondent was served with the same on September 25, 2021.

On October 27, 2021, Respondent filed Respondent’s Motion, requesting that a summary final order be entered finding that the claim is not compensable because Princess did not meet the requisite minimum statutory birth weight as required by section 766.302, Florida Statutes.

FINDINGS OF FACT

1. Princess was born on January 12, 2021, at TMH in Tallahassee, Florida. She was a single gestation.
2. The unrefuted medical records provided by Petitioner to Respondent, pursuant to section 766.305(3), document that Princess’s birth weight was 2,390 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 Petitioner does not have a claim that is compensable under the Plan and has filed Respondent’s Motion, 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.

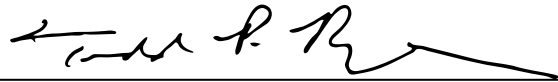
10. The evidence, which is not refuted, establishes that Princess was a single gestation and did not weigh at least 2,500 grams at birth. Thus, Princess did not sustain a birth-related neurological injury because she did

not meet the minimum statutory weight. Accordingly, Petitioner's claim for benefits is not compensable under the Plan.

CONCLUSION

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

DONE AND ORDERED this 8th day of November, 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

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of November, 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 2450 0002 1970 6654)

Kim Kellum, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified No. 7020 2450 0002 1970 6661)

Simone Marstiller, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(Certified No. 7020 2450 0002 1970 6678)

Thomas M. Hoeler, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(Certified No. 7020 2450 0002 1970 6685)

Brooke India Charlan, Esquire
Morgan & Morgan
20 N Orange Ave Suite 1600
Orlando, Florida 32801
(Certified No. 7020 2450 0002 1970 6692)

Jack Tobias Cook, Esquire
Morgan & Morgan, P.A.
9th Floor
20 North Orange Avenue
Orlando, Florida 32801
(Certified No. 7020 2450 0002 1970 6722)

Kenney Shipley, Executive Director
Florida Birth-Related Neurological
Injury Compensation Association
Post Office Box 14567
Tallahassee, Florida 32317
(Certified No. 7020 2450 0002 1970 6708)

Tallahassee Memorial Healthcare
Attention: Risk Management
1300 Miccosukee Road
Tallahassee, Florida 32308
(Certified No. 7020 2450 0002 1970 6739)

Alfredo Nova, M.D.
1634 North Plaza Drive
Tallahassee, Florida 32308
(Certified No. 7020 2450 0002 1970 6715)

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).