

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KINNEY GILLYARD AND SAVANNAH
GILLYARD O/B/O LYLE GILLYARD, A MINOR,

Petitioners,

Case No. 21-3057N

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 8, 2021.

Petitioners did not file a response in opposition.

STATEMENT OF THE CASE

On September 20, 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 Nickoloz Tchankoshvili, M.D., as the physician who provided obstetric services for the birth of Lyle Gillyard (Lyle) at Orange Park Medical Center in Orange Park, Florida, on December 30, 2015.

On October 7, 2021, DOAH mailed a copy of the Petition to Respondent, Dr. Tchankoshvili, and Orange Park Medical Center via certified mail. Respondent was served with the same on or before October 8, 2021.

On October 8, 2021, Respondent filed Respondent’s Motion, requesting that a summary final order be entered finding that the claim is not compensable because Lyle did not meet the requisite minimum statutory birth weight as required by section 766.302, Florida Statutes, and because the claim is time barred by section 766.313. Petitioners did not file a response to Respondent’s Motion.

FINDINGS OF FACT

1. Lyle was born on December 30, 2015, at Orange Park Medical Center in Orange Park, Florida. He was a single gestation.

2. The unrefuted medical records provided by Petitioners to Respondent, pursuant to section 766.305(3), document that Lyle’s birth weight was 2,490 grams.

3. The Petition was filed on September 20, 2021, five years and 264 days after Lyle’s birth.

CONCLUSIONS OF LAW

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

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. The Plan provides that "[a]ny claim for compensation ... that is filed more than five years after the birth of the infant alleged to have a birth-related neurological injury shall be barred." § 766.313, Fla. Stat.

11. 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.

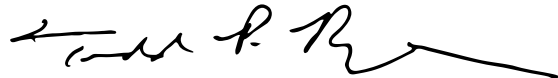
12. The evidence, which is not refuted, establishes that Lyle was a single gestation and did not weigh at least 2,500 grams at birth. Thus, Lyle did not sustain a birth-related neurological injury because he did not meet the minimum statutory weight. Accordingly, Petitioners' claim for benefits is not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

13. Additionally, as Petitioners' claim was filed more than five years after Lyle's birth, said claim for compensation is barred.

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

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)

Brooke India Charlan, Esquire
Morgan & Morgan
Suite 1600
20 N Orange Avenue
Orlando, Florida 32801
(Certified No. 7021 1970 0000 4860 9004)

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)

Nickoloz Tchankoshvili, M.D.
#800
6451 North Federal Highway
Fort Lauderdale, Florida 33308
(Certified No. 7021 1970 0000 4860 8991)

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. 7021 1970 0000 4860 9028)

Jack Tobias Cook, Esquire
Morgan & Morgan, P.A.
9th Floor
20 North Orange Avenue
Orlando, Florida 32801
(Certified No. 7021 1970 0000 4860 8984)

Orange Park Medical Center
Attention: Risk Management
2001 Kingsley Avenue
Orange Park, Florida 32073
(Certified No. 7021 1970 0000 4860 8977)

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).