

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

KIMBERLY PARISH, ON BEHALF OF AND AS  
PARENT AND NATURAL GUARDIAN OF SEAN  
CALLAHAN, A MINOR,

Petitioner,

vs.

Case No. 21-3483N

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent.

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FINAL ORDER

On December 9, 2021, Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), filed a Motion for Summary Final Order (Motion), asserting that the claim filed by Petitioner, Kimberly Parish on behalf of and as parent and natural guardian of Sean Callahan (Sean), is not compensable. Petitioner did not file a response to the Motion, and the time for doing so provided in Florida Administrative Code Rule 28-106.204 has passed.

STATEMENT OF THE ISSUE

The issue to be determined is whether Petitioner's child, Sean, has suffered a birth-related neurological injury as that term is defined in section 766.302(2), Florida Statutes (2017).

PRELIMINARY STATEMENT

On November 16, 2021, Petitioner filed a Petition for Benefits Pursuant to Florida Statutes Section 766.301 et seq. (Petition), alleging that Sean suffered a birth-related neurological injury. The Petition names Christopher

Sundstrom, M.D., as the physician providing obstetric services and Tallahassee Memorial Hospital as the hospital where Sean was born on August 11, 2017. Dr. Sundstrom, Tallahassee Memorial Hospital, and NICA were served with the Petition by certified mail on November 17, 2021.

The Motion was filed December 9, 2021, along with a Motion for Entry of a Protective Order Regarding Confidential Documents Related to Petitioner's Medical Records. The Motion for Entry of a Protective Order is granted. The Motion for Summary Final Order relies on the medical records provided with the Petition pursuant to section 766.305.

#### FINDINGS OF FACT

1. Sean was born at Tallahassee Memorial Hospital on August 11, 2017.
2. His birth weight was 1,735 grams.
3. There is no dispute regarding whether Dr. Sundstrom was a participating provider at the time of Sean's birth.

#### CONCLUSIONS OF LAW

4. The Division of Administrative Hearings (DOAH) has jurisdiction over the parties and the subject matter of these proceedings pursuant to sections 120.569, 120.57(1), and 766.304, Florida Statutes.

5. The Legislature established the Florida Birth-Related Neurological Injury Compensation Plan "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. An injured infant and certain other identified people, including the infant's parents, 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. Section 766.305(4) provides that NICA, which administers the Plan, has 45 days from the date that a complete claim is served to file a response to the

petition and to submit relevant written information related to whether the child has suffered a birth-related neurological injury.

7. If NICA determines that there is a birth-related neurological injury that is compensable under the Plan, it may award compensation to the claimant, provided that the award is approved by the assigned administrative law judge. § 766.305(7), Fla. Stat. If NICA disputes the claim, as it does in this case, the dispute must be resolved by the administrative law judge in accordance with chapter 120. §§ 766.304, 766.30, 766.31, Fla. Stat.

8. The initial inquiry is whether the infant has suffered a birth-related neurological injury as that term is defined in section 766.302(2), which provides:

(2) “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 in resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality. (emphasis supplied).

9. If the administrative law judge determines that the infant meets the statutory weight threshold and has sustained a brain or spinal order injury caused by oxygen deprivation or mechanical injury, and finds that as a result of the injury, the infant was rendered permanently and substantially mentally and physically impaired, then section 766.309(1) provides a rebuttable presumption that the injury is a birth-related neurological injury.

10. The evidence presented does not support such a finding in this case. The only evidence presented indicates that at birth, Sean weighed 1,735 grams, which is below the threshold weight established in section

766.302(2). This issue is dispositive as to compensability. Accordingly, Sean did not suffer a birth-related neurological injury as that term is defined in section 766.302(2) and is not eligible for benefits under the Plan.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law, the Petition for Benefits Pursuant to Florida Statute Section 766.301 et seq. is dismissed with prejudice.

DONE AND ORDERED this 11th day of January, 2022, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of January, 2022.

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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).