

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ASHLEY M. MILLER, ON BEHALF OF AND
AS PARENT AND NATURAL GUARDIAN OF
NIKOLA A. BUDESA, A MINOR,

Petitioner,

Case No. 22-0205N

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION ASSOCIATION,

Respondent.

_____ /

SUMMARY FINAL ORDER AND ORDER OF DISMISSAL

This is a proceeding to determine whether Petitioner, Ashley M. Miller, on behalf of, Nikola A. Budesa (Nikola), may obtain compensation from the Florida Birth-Related Neurological Injury Compensation Plan (Plan). Florida Birth-Related Neurological Injury Compensation Association (NICA) has moved for a summary final order determining the claim is not compensable and dismissing the Petition. NICA's Motion asserts, as the Petition states, that Dr. Cadee was the sole physician providing obstetrical services. NICA further asserts that Dr. Cadee was not a "participating physician" in the plan at the time of birth. NICA supported its motion with the affidavit of Tim Daughtry, Custodian of Records for NICA. Mr. Daughtry maintains NICA's official records of physicians participating in the Plan. Mr. Daughtry's undisputed Affidavit establishes that Dr. Chadee was not a participating physician in the Plan at the time of delivery. Ms. Miller has not filed a response to the Motion as Florida Administrative Code Rule 28-106.204(1) provides.

FINDINGS OF FACT

1. According to the Petition for Benefits, Nikola was born on October 1, 2020, in Clearwater, Florida. The Petition identifies only Annika Chadee, M.D., as a physician providing obstetric services who was present at the birth of the child.

2. At the time of Nikola's birth, Dr. Chadee was not a participating physician in the Plan.

CONCLUSIONS OF LAW

3. The Division of Administrative Hearings (DOAH) has jurisdiction over the parties to and the subject matter of these proceedings. DOAH has final order authority in this matter. §§ 766.301-766.316, Fla. Stat. (2021)

4. Section 120.57(1)(h), Florida Statutes (2021), authorizes a party to a proceeding in which the Administrative Law Judge (ALJ) has final order authority to move for a summary final order when there is no genuine issue of material fact. The statute also requires the ALJ to render a summary final order if "no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order."

5. Section 766.303(1), Florida Statutes (2020),¹ establishes "the Florida Birth-Related Neurological Injury Compensation Plan for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims." An ALJ of DOAH hears and determines all claims filed under the Plan.

6. Section 766.305(1)(c) requires a person seeking compensation under the plan to file a petition seeking compensation. The petition must include: "the name and

¹ All citations to Florida Statutes are to the 2020 codification unless noted otherwise.

address of any physician providing obstetrical services who was present at the birth" The Petition in this matter identifies only Annika Chadee, M.D., as a physician providing obstetrical services who was present at the birth of the child.

7. Among other things, the ALJ must determine, "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)(b), Fla. Stat. Delivery of obstetrical services by a participating physician is an essential element of establishing entitlement to compensation under the Plan.

8. "'Participating physician' means a physician licensed in Florida to practice medicine who practices obstetrics or performs obstetrical services either full time or part time and who had paid or was exempted from payment at the time of the injury the assessment required for participation in the birth-related neurological injury compensation plan for the year in which the injury occurred." § 766.302(7), Fla. Stat.

9. As established by the Findings of Fact, Dr. Chadee was not a "participating physician" of the Plan the year of Nikola's injury.

10. Section 766.309(2) provides: "If the administrative law judge determines that the injury alleged is not a birth-related neurological injury or that obstetrical services were not delivered by a participating physician at the birth, she or he shall enter an order and shall cause a copy of such order to be sent immediately to the parties by registered or certified mail."

11. Nikola is not entitled to compensation under the Plan.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, NICA's Motion for Summary Final Order is Granted. Petitioner's claim is not compensable under the Plan. The Petition is Dismissed with prejudice.

DONE AND ORDERED this 31st day of March, 2022, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of March, 2022.

COPIES FURNISHED:
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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).