

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

KATELYNN WEBB, INDIVIDUALLY AND AS  
PARENT AND NEXT FRIEND OF CHANDLER  
WILLIAMS, A MINOR,

Petitioner,

vs.

Case No. 22-0466N

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

HUSSAIN ESMAIL-RAWJI, M.D., AND  
MEMORIAL HOSPITAL - WEST VOLUSIA, INC.  
D/B/A ADVENTHEALTH DELAND,

Intervenors.

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SUMMARY FINAL ORDER

On August 9, 2022, Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), filed an Unopposed Motion for Summary Final Order (Motion). The Motion is supported by the affidavits and reports of Dr. Donald C. Willis, M.D., and Dr. Luis E. Bello Espinosa, M.D. The Motion indicates that neither Petitioner nor Intervenors oppose the Motion, and neither party filed a response in opposition within the time period established in Florida Administrative Code Rule 28-106.204.

STATEMENT OF THE ISSUE

Whether Petitioner's son, Chandler Williams (Chandler or the Infant), suffered a birth-related neurological injury as that term is defined in section 766.302(2), Florida Statutes.

PRELIMINARY STATEMENT

On February 2, 2022, Petitioner filed a Petition for NICA Benefits (Petition). The Petition identified AdventHealth Deland (Advent) as the hospital where Chandler was born, and Hussein Esmail-Rawji, M.D., as the physician providing obstetrical services.

On February 14, 2022, NICA, Advent, and Dr. Esmail-Rawji were notified by certified mail that the Petition had been filed. Both Advent and Dr. Esmail-Rawji moved to intervene and both were granted intervention status.

On March 18, 2022, NICA filed a Response to Petition for Benefits, indicating that the claim was not compensable under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). On March 22, 2022, an Order was issued, directing the parties to advise whether a hearing on compensability would be necessary, and if so, when and for how long the hearing should be scheduled. Intervenors requested an extension of time to conduct limited discovery to determine whether a hearing was necessary, and on June 29, 2022, the parties filed a Status Report indicating that Intervenors had not made a final decision concerning whether a hearing was necessary, but in the event that it was, all parties were available September 14, 2022.<sup>1</sup> On June 30, 2022, a Notice of Hearing was issued, setting the hearing for the date provided.

On August 1, 2022, NICA filed an additional Status Report, advising that a hearing would not be necessary and that NICA would be filing a Motion for

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<sup>1</sup> It was fortuitous that the undersigned was available on the sole date provided by the parties. In the future, it would be preferable for the parties to provide multiple days of availability to facilitate the scheduling process.

Summary Final Order. As noted above, the Motion was filed August 9, 2022, and on August 10, 2022, an Order was issued canceling the hearing.

While NICA filed the Motion on August 9, 2022, it did not file the affidavits of Dr. Willis or Dr. Espinosa at that time. By Order dated August 24, 2022, NICA was advised that pursuant to section 120.57(1)(h), Florida Statutes, in the absence of affidavits, depositions, answers to interrogatories, or admissions on file, there was no record basis to support the Motion. Accordingly, NICA was directed to file the physicians' affidavits, or in the alternative, the Motion would be denied and rescheduled for hearing. NICA filed the affidavits of its experts on September 13, 2022, and those affidavits have been considered in the preparation of this Summary Final Order.

All references to the Florida Statutes are to the 2019 codification. All emphasis is in the original unless otherwise indicated.

#### FINDINGS OF FACT

1. Chandler was born on November 4, 2019, and weighed 4,040 grams.
2. There is no dispute that the physician providing obstetrical services at his birth was a participating physician in the NICA program.
3. Chandler was delivered vaginally, but with some complications. He presented with shoulder dystocia, lasting approximately one minute. Chandler received bag and mask ventilation resuscitation for about two minutes, and was transferred to another hospital for cooling protocol, due to suspected hypoxic ischemic encephalopathy (HIE) risk.
4. Dr. Donald Willis, M.D., is a physician licensed in both Florida and Tennessee, and is board certified in obstetrics and gynecology. Dr. Willis is an associate professor at the Quillen College of Medicine at East Tennessee State University and specializes in maternal-fetal medicine.

5. Dr. Willis reviewed the records related to the Infant's birth and post-delivery treatment. In his affidavit, he states:

Based upon my education, training and experience, it is my professional opinion, within a reasonable degree of medical probability, that, there was an obstetrical event that resulted in a loss of oxygen to the baby's brain during labor, delivery, and continuing into the immediate post-delivery period. The oxygen deprivation resulted in brain injury but I am not able to comment about the severity of the injury.

6. Dr. Luis E. Bello Espinosa, M.D., is a physician licensed in the State of Florida. He is board certified in pediatric neurology and neurology, epilepsy, clinical neurophysiology, and epilepsy monitoring, and is presently the Division Head of Pediatric Neurology and Pediatric Epilepsy at Arnold Palmer Children's Hospital in Orlando, Florida.

7. Dr. Espinosa examined Chandler on March 5, 2022, when he was approximately two years, four months old. Based on his review of the medical records and examination of the Infant, he compiled a report, which he incorporates by reference in his affidavit. His report states in summary:

Chandler is a 2-year 4-month old boy with a history of perinatal depression due to moderate hypoxic-ischemic encephalopathy of birth for which he underwent 72-hours therapeutic hypothermia. He was documented in the NICU to have acute electroclinical and electrographic seizures which required combined anti-seizure medications for seizure control. An MRI of the brain obtained on day 4<sup>th</sup> of life demonstrating findings indicative [of] acute ischemic injury involving the bilateral thalami, left internal capsule and left insula.

Despite the acute neonatal HIE, on the examination today Chandler has a completely normal neurological examination without any remote signs as a result of the acute perinatal insult. Chandler has no evidence of clinical signs of

cerebral cortical, subcortical, extrapyramidal, or cerebellar dysfunction. Chandler does not have evidence of upper or lower neuron dysfunction. There is no evidence of myelopathy (spinal cord dysfunction), plexopathy, neuropathy, neuromuscular junction or myopathic processes.

8. Dr. Espinosa concluded that Chandler does not suffer from either substantial mental or physical impairments at this time.

9. No evidence was presented to rebut the findings or opinions of either physician. Their opinions are credited.

10. As a matter of ultimate fact, Chandler did not suffer from a birth-related neurological injury that resulted in substantial and permanent mental and physical impairment.

#### CONCLUSIONS OF LAW

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

12. The Legislature established the Plan to provide compensation, regardless of fault, for children with severe and permanent birth-related neurological injury claims. § 766.303(1), Fla. Stat.

13. An infant's parents or guardians, among others, may seek compensation under the Plan by filing a claim for compensation with the Division of Administrative Hearings. §§ 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.

14. 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, and 766.31, Fla. Stat.

15. 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.

16. If the administrative law judge determines that the infant has sustained a brain or spinal cord 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.

17. The evidence presented in this case does not support such a finding. The physician reports and affidavits demonstrate that the Infant did suffer a hypoxic ischemic event during labor and delivery that resulted in an injury to the brain. However, that event did not cause any permanent and substantial mental or physical injury. Accordingly, Chandler is not eligible for benefits under the Plan.

CONCLUSION

Based upon the Findings of Facts and Conclusions of Law, NICA's Motion for Summary Final Order is granted, and Petitioner's Petition is dismissed with prejudice.

DONE AND ORDERED this 28th day of September, 2022, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
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 28th day of September, 2022.

COPIES FURNISHED:  
(via certified mail)

Amie Rice, Investigation Manager  
(Address of Record)  
(Certified No. 70211970000048606836)

Simone Marstiller, Secretary  
(eServed)  
(Certified No. 70211970000048606881)

Kim Kellum, Esquire  
(eServed)  
(Certified No. 70211970000048606843)

Thomas M. Hoeler, Esquire  
(eServed)  
(Certified No. 70211970000048606898)

Kathe Alexander, Claims Manager  
(eServed)  
(Certified No. 70211970000048606850)

Allison C. McMillen, Esquire  
(eServed)  
(Certified No. 70211970000048606904)

Robert D. Henry, Esquire  
(Address of Record)  
(Certified No. 70211970000048606867)

Alan P. Mirelman, Esquire  
(eServed)  
(Certified No. 70111970000048606911)

Ryan P. Kopf, Esquire  
(eServed)  
(Certified No. 70211970000048606874)

Brooke M. Gaffney, Esquire  
(eServed)  
(Certified No. 70211970000048606928)

### 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).