

**STATE OF FLORIDA**  
**DIVISION OF ADMINISTRATIVE HEARINGS**

ISAAC MOMPLAISIR AND ALEXANDRA  
MOMPLAISIR O/B/O ALEXANDER  
MOMPLAISIR, A MINOR,

Petitioners,

vs.

Case No. 22-0668N

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent,

and

ADVENTIST HEALTH SYSTEMS/SUNBELT,  
INC. D/B/A ADVENTHEALTH WINTER  
PARK,

Intervenor.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause comes before the undersigned on the Unopposed Motion for Summary Final Order of Respondent, Florida Birth-Related Neurological Injury Compensations Association (NICA), filed July 18, 2022. The motion states that it is unopposed, and the status report filed June 24, 2022, states that Petitioners and Intervenor do not contest NICA's finding of non-compensability.

NICA's motion seeks entry of a summary final order pursuant to sections 120.57(1)(h) and 766.309, Florida Statutes (2021), (1) determining that the claim in this case is not compensable under the NICA plan because Alexander Momplaisir did not suffer a birth-related neurological injury as defined by section 766.302(2); and (2) dismissing this claim with prejudice.

## ISSUE

Did Alexander Momplaisir suffer a "birth-related neurological injury," as defined by section 766.302(2), for which compensation should be awarded under the Florida Birth-Related Neurological Injury Compensation Plan (Plan)?

## FINDINGS OF FACT

1. Petitioners, Isaac Momplaisir and Alexandra Momplaisir, are the parents of Alexander Momplaisir, and bring this action on his behalf.
2. Alexander Momplaisir was born on September 24, 2021, at AdventHealth Winter Park.
3. The Momplaisirs filed a Petition, Under Protest for Plan Benefits, on February 24, 2022. NICA contested the Petition asserting that Alexander's injury was not compensable by the Plan because the injury did not meet the definition of a birth-related neurological injury as defined by section 766.302(2). NICA contested the Petition.
4. NICA retained two experts to determine whether Alexander had suffered a compensable injury. The written opinion of Donald C. Willis, M.D., based upon his review of pertinent medical records, supports a finding that Alexander experienced oxygen deprivation during labor and delivery and during the immediate post-delivery period, but that the deprivation did not result in a permanent or substantial brain injury.
5. Dr. Willis makes this statement:
  3. Based upon my education, training and experience, it is my professional opinion, within a reasonable degree of medical probability, that, placental abruption occurred during labor and resulted in loss of oxygen to the baby's brain during labor, delivery and continued into the immediate post-delivery period. The oxygen deprivation resulted in some initial brain injury although I am not able to comment about the severity of the injury or whether the brain injury was permanent. A

complete summary of my medical review and report is attached hereto as Exhibit "B".

6. The opinion of Michael Duchowny, M.D., based upon a review of the medical records and evaluation of Alexander, also supports finding that Alexander did not suffer permanent or substantial impairment as a result of obstetrical services delivered during the course of labor, delivery, or resuscitation in the immediate post-delivery period.

7. Dr. Duchowny makes this statement:

Although Xander [Alexander] is only 8-months-old, his developmental progress does not suggest that he has or will develop a substantial motor or mental impairment. Rather Xander has a minor delay in the motor development of his right arm, and his communication appears to be progressing at an age-appropriate level.

#### CONCLUSIONS OF LAW

8. The Division of Administrative Hearings (DOAH) has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

9. The Legislature established the 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.

10. An injured infant, his or her 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. 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 relating to the issue of whether the injury is a birth-related neurological injury. In this case that time period was enlarged.

11. If NICA determines that the alleged injury 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. However, if NICA disputes the claim, as it does in this case, the dispute must be resolved by the assigned administrative law judge in accordance with chapter 120. §§ 766.304 and 766.31, Fla. Stat.

12. The first inquiry is whether the infant has sustained a birth-related neurological injury as defined by section 766.302(2).

13. In this case, the uncontested evidence does not support a finding that the injury is a birth-related neurological injury. Based upon the evidence and the Findings of Fact, Alexander Momplaisir did not sustain a birth-related neurological injury as defined in section 766.302(2). Petitioners are therefore not eligible for benefits under the Plan.

#### CONCLUSION

Based upon the Findings of Fact and Conclusions of Law above, Petitioners' claim is not compensable under the Plan. It is ORDERED that the Petition is dismissed with prejudice.

DONE AND ORDERED this 25th day of July, 2022, in Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of July, 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).