

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

MICHAEL BARKEMA AND TANJA BARKEMA  
O/B/O JONATHAN BARKEMA, A MINOR,

Petitioners,

vs.

Case No. 22-1262N

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent.

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SUMMARY FINAL ORDER OF DISMISSAL

This cause comes before the undersigned on Respondent's Unopposed Motion for Summary Final Order, filed July 14, 2022. Petitioners have not opposed the motion, and the motion states that Petitioners do not oppose the motion.

The motion of Respondent, Florida Birth-Related Neurological Injury Compensation Association (NICA), 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 Jonathan Barkema did not suffer a birth-related neurological injury as defined by section 766.302(2); and (2) dismissing this claim with prejudice.

ISSUE

Did Jonathan Barkema 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, Michael Barkema and Tanja Barkema, are the parents of Jonathan and bring this action on his behalf.
2. Jonathan was born on August 24, 2021, at Sarasota Memorial Hospital.
3. The Barkemas filed a Petition, Under Protest for Plan Benefits, on March 24, 2022. NICA contested the Petition asserting that Jonathan's injury was not compensable by the Plan because the injury did not meet the definition of a birth-related neurological injury as defined in section 766.302(2).
4. NICA retained two experts to determine whether Jonathan had suffered a compensable injury. The written opinion of Donald C. Willis, M.D., based upon his review of pertinent medical records, establishes that Jonathan experienced oxygen deprivation during labor and delivery and during the immediate post-delivery period but that the deprivation did not result in permanent or substantial brain injury.
5. The written opinion of Luis E. Bello-Espinosa, M.D., based on examination of the medical records and the child, similarly establishes that Jonathan does not have "permanent substantial mental or physical impairments that occurred during labor, delivery, or the immediate post-delivery period."

### CONCLUSIONS OF LAW

6. 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.
7. 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.

8. 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.

9. 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 sections 766.304 and 766.31.

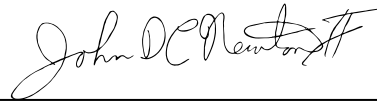
10. The first inquiry is whether the infant has sustained a birth-related neurological injury as defined by section 766.302(2).

11. 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, Johnathon 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. The Petition is dismissed with prejudice.

DONE AND ORDERED this 26th day of July, 2022, in Tallahassee, Leon  
County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th 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).