

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

BRITTNEY GRANT O/B/O BRIELLA GRANT,  
A MINOR,

Petitioner,

vs.

Case No. 22-1347N

FLORIDA BIRTH-RELATED NEUROLOGICAL  
INJURY COMPENSATION ASSOCIATION,

Respondent.

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SUMMARY FINAL ORDER OF DISMISSAL

This matter came before the undersigned on Respondent's Unopposed Motion for Summary Final Order (Motion), filed July 14, 2022.

STATEMENT OF THE CASE

On April 25, 2022, Petitioner filed a Petition, Under Protest, for Benefits Pursuant to Florida Statute Section 766.301 *et seq.* (Petition), with the Division of Administrative Hearings (DOAH), for a determination of compensability under the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Petition named Laura McCurdy, M.D., as the physician who provided obstetric services for the birth of Briella Grant (Briella) at Cleveland Clinic Martin Health (Cleveland Clinic) in Port St. Lucie, Florida, on August 3, 2021.

On May 5, 2022, DOAH mailed a copy of the Petition to Respondent, Dr. McCurdy, and Cleveland Clinic via certified mail. Respondent was served with the Petition on May 5, 2022.

On June 20, 2022, Respondent filed its Response to Petition for Benefits wherein Respondent maintained that the claim was not compensable because Briella did not sustain a “birth-related neurological injury,” as defined by section 766.302(2), Florida Statutes. Respondent requested that a bifurcated hearing be scheduled to address the issues of compensability and notice first, and, if required, to address the amount of an award in a second hearing.

On June 21, 2022, the undersigned issued an Order Requiring Response, directing the parties to communicate and advise whether a hearing would be required and, if so, provide several mutually agreeable dates in which the parties were available for hearing. On June 28, 2022, Respondent’s Status Report was filed, wherein Respondent advised that Petitioner did not contest Respondent’s determination of non-compensability and that Respondent anticipated filing an unopposed motion for summary final order.

As noted above, Respondent’s Motion, which is unopposed, was filed on July 14, 2022.

#### FINDINGS OF FACT

1. Briella was born on August 3, 2021, at Cleveland Clinic in Port St. Lucie, Florida.
2. Briella was a single gestation, and her birth weight exceeded 2,500 grams.
3. As set forth in greater detail below, the unrefuted evidence establishes that Briella did not sustain a “birth-related neurological injury,” as defined by section 766.302(2).
4. Donald Willis, M.D., a board-certified obstetrician specializing in maternal-fetal medicine, was retained by Respondent to review the pertinent medical records of Ms. Grant and Briella and opine as to whether Briella sustained an injury to her brain or spinal cord caused by oxygen deprivation

or mechanical injury that occurred during the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.

5. In his supporting affidavit, Dr. Willis opines, to a reasonable degree of medical probability, as follows:

Based on 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 some degree of oxygen deprivation during labor, delivery and continuing into the immediate post-delivery period, however, based on a normal head MRI on day of life 5, the oxygen deprivation did not appear to result in any identifiable brain injury.

6. Respondent also retained Luis E. Bello-Espinosa, M.D., a pediatric neurologist. Dr. Bello-Espinosa was retained to review the available medical records and conduct an examination of Briella to determine whether she suffers from an injury which rendered her permanently and substantially mentally and physically impaired; and whether such injury is consistent with an injury caused by oxygen deprivation or mechanical injury occurring during the course of labor, delivery, or the immediate post-delivery period in the hospital.

7. Dr. Bello-Espinosa conducted the examination on June 11, 2022. In his report following the examination, he issued his findings, which are set forth, in pertinent part, as follows:

Briella is an Eleven-month-old girl with a history of perinatal depression due to a hypoxic-ischemic encephalopathy of birth for which she underwent therapeutic hypothermia. Briella did not have seizures. An MRI of the brain obtained on day 5 of life show normal brain structures. There were no findings of hypoxic-ischemic injury.

On the evaluation today [sic] is evident that Briella has a normal neurologic exam for her age. Briella was found to have no evidence of clinical signs of abnormal upper or lower motor neuron dysfunction.

She has no abnormal signs of corticospinal, extrapyramidal, brain stem, cerebellar or spinal cord dysfunction. There are no signs of abnormal behavior for her age, and there are no signs to suggest residual brain dysfunction or encephalopathy.

8. In his supporting affidavit, Dr. Bello-Espinosa set forth his medical opinion as follows:

Based upon my education, training and experience, it is my professional opinion, within a reasonable degree of medical probability, that, based upon my review of the medical records and examination of Briella Grant on June 11, 2022, Briella does not have permanent or substantial mental or physical impairments related to oxygen deprivation occurring during labor, delivery or the immediate post-delivery period.

9. The undisputed and unopposed findings and opinions of Drs. Willis and Bello-Espinosa are credited. The undersigned finds that Briella did not sustain an injury to her brain caused by oxygen deprivation occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital, which rendered her permanently and substantially mentally and physically impaired.

#### CONCLUSIONS OF LAW

10. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 766.301-766.316, Fla. Stat.

11. The Plan was established by the Legislature “for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims” relating to births occurring on or after January 1, 1989. § 766.303(1), Fla. Stat.

12. The injured infant, her or his 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. Respondent, which administers the Plan, has “45 days from the date of service of a complete claim ... in which 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.” § 766.305(4), Fla. Stat.

13. If Respondent determines that the injury alleged is a claim that is a compensable birth-related neurological injury, it may award compensation to the claimant, provided that the award is approved by the administrative law judge (ALJ) to whom the claim has been assigned. § 766.305(7), Fla. Stat. If, on the other hand, compensability is disputed, the dispute must be resolved by the assigned ALJ in accordance with the provisions of chapter 120, Florida Statutes. §§ 766.304, 766.309, and 766.31, Fla. Stat.

14. In its present posture, the ALJ is required to make the following threshold determination based upon the available evidence:

(a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the administrative law judge, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.303(2).

§ 766.309(1), Fla. Stat.

15. The term “birth-related neurological injury” is defined in section 766.302(2) as follows:

“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 resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired.


16. If the ALJ determines that the injury is not a birth-related neurological injury, he or she is required to enter an order and immediately provide a copy to the parties. § 766.309(2), Fla. Stat.

17. The undisputed and unopposed evidence establishes that Briella did not sustain a compensable birth-related neurological injury, as defined in section 766.302(2), and, therefore, is not eligible for benefits under the Plan.

#### CONCLUSION

Based on the Findings of Fact and the Conclusions of Law, it is ORDERED that Respondent's Motion is granted, and the Petition is dismissed with prejudice.

DONE AND ORDERED this 22nd day of July, 2022, in Tallahassee, Leon County, Florida.



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TODD P. RESAVAGE  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 22nd 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).