

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CLARK CHAMBERLIN, A MINOR, BY AND
THROUGH HIS PARENTS AND NATURAL
GUARDIANS, KELLI CHAMBERLIN AND
TODD CHAMBERLIN,

Petitioners,

vs.

Case No. 14-1380MTR

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

FINAL ORDER

Pursuant to notice, a final hearing was conducted in this case on January 28, 2021, via Zoom teleconference, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Floyd B. Faglie, Esquire
 Staunton & Faglie, PL
 189 East Walnut Street
 Monticello, Florida 32344

For Respondent: Alexander R. Boler, Esquire
 2073 Summit Lake Drive, Suite 300
 Tallahassee, Florida 32317

STATEMENT OF THE ISSUE

The issue in this proceeding is how much of Petitioner’s settlement proceeds should be paid to Respondent, Agency for Health Care

Administration (“AHCA”), to satisfy AHCA's Medicaid lien under section 409.910, Florida Statutes.

PRELIMINARY STATEMENT

On March 24, 2014, Petitioner Clark Chamberlin, a minor, by and through his parents and natural guardians, Kelli Chamberlin and Todd Chamberlin, filed with DOAH a pleading styled “Petition to Determine Amount Payable to Agency for Health Care Administration in Satisfaction of Medicaid Lien.”

The case was scheduled for hearing on May 21, 2014. On April 4, 2014, Petitioner filed a Motion to Stay the Proceedings due to pending litigation against additional defendants in the underlying medical malpractice case. By Order of April 24, 2014, the case was placed in abeyance pending resolution of the underlying medical malpractice action. On March 3, 2015, the case was transferred to the undersigned due to a reassignment of the ALJ originally assigned to the case. Numerous status reports were filed and 13 Orders continuing the case in abeyance were entered over the course of the next six years. By notice dated October 28, 2020, Petitioner notified the undersigned that the final defendants had settled and Petitioner was ready to proceed to hearing. The abeyance was lifted by Order dated November 10, 2020, and the final hearing was set for January 28, 2021.

On January 14, 2021, Petitioner filed an unopposed Motion for Leave to Amend the Petition. By Order dated January 19, 2021, leave was granted to file the Amended Petition, which thereby became the operative initial pleading in this case. On January 20, 2021, the parties filed a Joint Pre-hearing Stipulation that included numerous stipulated and admitted issues of law and fact. Those stipulated issues of law and fact have been incorporated herein as appropriate.

At the hearing, Petitioner presented the testimony of two attorneys, Thomas H. Leeder and R. Vinson Barrett, both of whom were accepted without objection as experts in the evaluation of damages for medical malpractice and wrongful death cases. Petitioner's Exhibits 1 through 11 were accepted into evidence. AHCA presented no witnesses. AHCA's Exhibit 1 was admitted into evidence under seal.

The one-volume Transcript of the hearing was filed at DOAH on March 5, 2021. The parties' joint motion for extension of the time for filing proposed final orders was granted by Order dated March 11, 2021, and a filing deadline of March 23, 2021, was established. In keeping with the Order granting extension, Petitioner filed his Proposed Final Order on March 23, 2021. AHCA's Proposed Final Order was logged in at DOAH at 8:00 a.m. on March 24, 2021, which indicates it was filed on March 23, 2021, but after 5:00 p.m. Petitioner has not objected to AHCA's late filing. The undersigned finds the filing was so near the deadline that no unfair advantage could have accrued to AHCA. Both Proposed Final Orders have been considered in the writing of this Final Order.

All references to the Florida Statutes are to the 2020 edition, unless otherwise noted.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. On November 5, 2008, Kelli Chamberlin gave birth to Clark Chamberlin and his twin brother Sawyer at St. Mary's Medical Center in Palm Beach County. The boys were born prematurely, at 29 weeks gestation. Clark and Sawyer were admitted to the hospital's Neonatal Intensive Care Unit. While Clark's mother had tested positive for Group B Streptococcus

prior to giving birth, the medical staff responsible for Clark's care failed to timely treat Clark with the proper antibiotics. Clark developed meningitis and resulting hydrocephalus. As a result, Clark suffered catastrophic neurological injury and was left permanently disabled. Clark is unable to walk, talk, eat, toilet, or care for himself in any manner. He is dependent on the care of his parents for every aspect of his daily life.

2. Clark's medical expenses related to his injury were partly paid through his father's employer, which maintained a self-funded employee benefit plan governed by the Employee Retirement Income Security Act of 1974, or ERISA. The Medicaid program administered by AHCA paid for the remainder of Clark's medical expenses. The employer's ERISA plan provided \$280,318.94 in benefits related to Clark's injuries, and asserted a subrogation and reimbursement claim in this amount. The Medicaid program provided \$1,409,615.94 in benefits related to Clark's injuries. The sum of these benefits, \$1,689,934.88, constituted Clark's entire claim for past medical expenses.

3. Clark's parents brought a medical malpractice action against the medical providers responsible for his care ("Defendants") to recover all of Clark's damages, as well as their own individual damages associated with their son's injuries.

4. The medical malpractice action was settled through a series of unallocated confidential settlements totaling a gross amount of \$9,449,500.

5. As a condition of Clark's eligibility for Medicaid, Clark assigned to AHCA his right to recover from liable third parties' medical expenses paid by Medicaid. *See* 42 U.S.C. § 1396a(a)(25)(H) and § 409.910(6)(b), Fla. Stat.

6. During the pendency of Clark's medical malpractice action, AHCA was notified of the action and AHCA asserted a \$1,409,615.94 Medicaid lien against Clark's cause of action and settlement of that action.

7. AHCA did not commence a civil action to enforce its rights under section 409.910 or intervene or join in Clark's action against the Defendants.

8. By letter, AHCA was notified of Clark's settlement.

9. AHCA has not filed a motion to set aside, void, or otherwise dispute Clark's settlement.

10. The Medicaid program through AHCA spent \$1,409,615.94 on behalf of Clark, all of which represents expenditures paid for Clark's past medical expenses.

11. The parties stipulated that application of the formula provided by section 409.910(11)(f) to Clark's \$9,449,500 settlement would require payment to AHCA of the full \$1,409,615.94 Medicaid lien.

12. Petitioner has deposited the Medicaid lien amount in an interest-bearing account for the benefit of AHCA pending an administrative determination of AHCA's rights, which constitutes "final agency action" for purposes of chapter 120, Florida Statutes, pursuant to section 409.910(17)(b).

13. Thomas H. Leeder is a trial attorney and a partner with the Leeder Law Firm in Plantation. Mr. Leeder practices exclusively plaintiff's personal injury law and handles catastrophic injury cases, including cases involving children. Mr. Leeder testified that he handles jury trials and is familiar with building a case for trial by reviewing medical records, reviewing accident reports, speaking with doctors, and meeting with clients. Mr. Leeder stays abreast of jury verdicts by reviewing jury verdict reports and discussing cases with other attorneys, including some who defend personal injury suits.

14. Mr. Leeder is a member of a number of trial attorney associations, including the Florida Justice Association, the American Association for Justice ("AAJ"), and the AAJ's Birth Trauma Litigation Group. Mr. Leeder testified that as a routine part of his practice, he makes assessments concerning the value of damages suffered by injured clients. Mr. Leeder explained in detail his process for making these determinations. Mr. Leeder testified that he is familiar with, and routinely participates in, the allocation of settlements in the context of health insurance liens, workers' compensation

liens, and Medicare set-asides, as well as post-verdict allocations of judgments by trial judges.

15. Mr. Leeder and his partner, Scott Newmark, represented Clark and his parents in Clark's medical malpractice suit. Mr. Newmark began the suit in 2009. Mr. Leeder got involved in 2016 to depose the defense experts on liability and damages. Mr. Leeder testified that he reviewed Clark's medical records, deposed the Defendants' expert witnesses, reviewed expert reports, and met with Clark and his family many times.

16. Mr. Leeder testified as to the facts of the case. Due to their premature birth and low birth weight, Clark and Sawyer were more than usually susceptible to infection. Mr. Leeder testified that 19 days after birth and while still in the hospital, Clark and Sawyer developed infections and became septic.

17. Mr. Leeder explained that both sepsis and meningitis are treated with antibiotics, but that meningitis must be treated with three times the amount of antibiotics because the drugs must penetrate the blood-brain barrier to be effective. Both boys were treated for sepsis, but Clark's infection had progressed into meningitis before it was diagnosed. By the time the diagnosis was made, Clark's brain had been catastrophically damaged. Defense and plaintiff's radiologists described holes throughout the child's brain that were visible on scans.

18. Mr. Leeder testified that hydrocephalus is a known complication of meningitis. Clark developed hydrocephalus and required a series of shunts to release the pressure on his brain caused by obstructive hydrocephalus. Clark's brain damage was catastrophic and irreversible.

19. Mr. Leeder testified that Clark's catastrophic brain damage has had a devastating effect on Clark and his family. Clark is unable to walk, talk, or toilet. He requires a feeding tube for most of his nutrients, though he can take some pureed foods by mouth. He requires 24-hour nursing care. Kelli Chamberlin had to quit her job as a dental radiologist to care for Clark.

Mr. Leeder testified that it is especially heartbreaking for Clark's parents to see a healthy twin brother and realize how Clark likely would have progressed but for the medical malpractice.

20. Mr. Leeder testified that, based on his professional training and experience, Clark and his parents' damages have a value well in excess of \$45 million. Mr. Leeder described the steps that his law firm took during the litigation to arrive at a valuation of damages.

21. Mr. Leeder's firm retained Stephanie Chalfin, an expert in vocational analysis and life care planning, to prepare a life care plan for Clark. Ms. Chalfin performed a vocational analysis. Clark's loss of earnings was estimated conservatively, based on his parents' educational level and earnings. As noted above, Kelli Chamberlin is trained as a dental radiologist. Todd Chamberlin is an ultrasound technician. Clark's lost future earnings were, therefore, premised on his attainment of a bachelor's degree or some level of technical education.

22. Ms. Chalfin consulted with Clark's physicians to determine the nature and level of care he would require going forward. Her written report on the life care plan was supplemented by an evaluation from an independent physiatrist. The total economic losses in the case were then reviewed by economist Oscar Padron, who reduced them to present value.

23. Mr. Leeder testified that Clark's claim for economic damages had a low-end value of \$29.6 million and a high-end value of \$38.4 million. Mr. Leeder explained that the difference in the low-end value and the high-end value revolved around different projections as to Clark's life expectancy prepared by his physicians.

24. Mr. Leeder testified that the family's claim for non-economic damages would be added to the \$29.6 to \$38.4 million in economic damages and the roughly \$1.6 million claim for past medical expenses to determine the full value of their damages. Mr. Leeder opined that the claim for non-economic damages would have a very high value in light of jury verdicts in comparable

cases involving children with brain damage. Mr. Leeder noted a 2004 case in Palm Beach County in which the child was brain damaged at birth by improper use of forceps during delivery and the jury awarded the child and parents \$63 million, with \$17 million in pain and suffering for the child and \$7 million in pain and suffering for each parent.

25. Mr. Leeder testified that in a total of nine comparable jury verdicts, the average award for non-economic damages was \$19.4 million. If this \$19.4 million were added to the low-end \$28.4 million value of the Chamberlins' economic damages, the total would more than exceed Mr. Leeder's conservative \$45 million valuation of all the damages in the instant case. Mr. Leeder concluded that the \$45 million valuation was "extra conservative" because it did not even include the parents' pain and suffering.

26. Mr. Leeder testified that he extensively discussed the case with Mr. Newmark and appellate co-counsel, Phil Burrington, numerous times. He also discussed the case with several defense attorneys with whom he routinely works. Mr. Leeder testified that the attorneys with whom he discussed the case unanimously agreed that the damages had a value in excess of \$45 million.

27. Mr. Leeder testified that the medical malpractice claim was pursued against the hospital and various medical staff and medical providers who cared for Clark during and after birth. A number of the Defendants, including the hospital, the OB/GYN, the neurologists, and a pediatric group, settled early for their insurance policy limits. Ultimately, the only remaining Defendants were the treating neonatology group and its individual doctors.

28. Mr. Leeder testified the theory of liability was that the Defendants failed to prevent or properly treat the meningitis. Proof was difficult because there was medical literature supporting both sides' arguments concerning the standard of care. The case against the neonatology group eventually focused on whether the plaintiffs could gain access to a data base kept by the group that was arguably protected by a statutory equivalent of the work-product

privilege. Mr. Leeder testified that he believed the information from this data base could have been used to refute and impeach the deposition testimony of the doctors.

29. The access question was litigated up to the Fourth District Court of Appeal, which finally issued an opinion in favor of the plaintiffs. Rather than turn over the data base to the plaintiffs, the neonatology group settled the case on the day following the court's opinion.

30. The total settlement from all Defendants was \$9,449,500. Mr. Leeder testified that the settlement did not come close to compensating Clark for the full value of his damages. Based on the conservative \$45 million value of all damages, Clark recovered only 21 percent of the value of his damages from the settlement. Using a pro rata methodology, Mr. Leeder concluded that the appropriate share of Clark's past medical expenses to be applied to satisfy AHCA's medical lien should be 21 percent of the \$1,689,934.88 total past medical expenses, or \$354,886.32.¹ Mr. Leeder's testimony was uncontradicted and persuasive as to the methodology to be used in calculating AHCA's share of the recovery.

31. R. Vinson Barrett testified on behalf of Petitioner as an expert in the evaluation of damages for medical malpractice and wrongful death cases, without objection from AHCA. Mr. Barrett has been a trial attorney for over 40 years and is a partner with the law firm of Barrett, Nonni and Homola, PA, in Tallahassee. For at least 30 years, Mr. Barrett's practice has been focused on plaintiffs' medical malpractice and wrongful death cases and has routinely conducted jury trials. He has handled cases involving catastrophic injury, including brain injury to children. He is a member of the Florida Justice Association and the Capital City Justice Association.

¹ Contrary to Mr. Leeder's testimony, AHCA's Medicaid lien was only \$1,409,615.94. The number used by Mr. Leeder, \$1,689,934.88, included past medical expenses paid by the Chamberlins's private insurance, which should not be used to calculate AHCA's recovery.

32. Mr. Barrett is familiar with reviewing medical records, reviewing life care plans, reviewing economist reports, and preparing cases for trial. As a routine part of his practice, Mr. Barrett stays abreast of jury verdicts by reviewing jury verdict reports and discussing cases with other trial attorneys. Another routine part of his practice is to make assessments of the value of damages suffered by injured parties.

33. Mr. Barrett testified that he is familiar with settlement allocation in the context of health insurance liens, Medicare set-asides, and workers' compensation liens. He further testified that he is familiar with the process of allocating settlements in the context of Medicaid liens. Mr. Barrett has been accepted as an expert in the valuation of damages in federal court and in many Medicaid lien hearings at DOAH.

34. Mr. Barrett testified that he was familiar with the instant case. He reviewed all exhibits filed in this proceeding and was present for Mr. Leeder's testimony. Mr. Barrett testified that Clark's life care plan was similar to many life care plans he had reviewed in cases involving catastrophic brain damage to children. Mr. Barrett described Clark's injury and the impact it had on Clark and his family:

It's catastrophic. This is about the worst thing that could possibly ever happen to a family. His injury, of course, has obliterated his life. And it's been – you know, I can tell from what I've reviewed that it's been a tremendous stress on his family. It's changed their ability to work and earn a living. It's a 24/7 obligation that they have, and a sad situation, because they can see what Clark probably would have been, had it not been for this injury, because of his twin's progress. This family has been referred to family counseling... There's just a lot of psychological and practical reasons that this has been a huge, huge dark cloud over the family's existence ever since it happened.

35. Mr. Barrett testified, based on his professional training and experience, that the conservative value of the damages is more than

\$45 million. He observed that the life care plan and the economist's report presented several options regarding the present value of Clark's future medical expenses depending on his life expectancy. Those options, as also described by Mr. Leeder, ran from a low-end of \$27,951,967 to a high-end of \$36,752,806 for Clark's lost future earnings and future medical expenses. Mr. Barrett noted that these numbers would need to be added to the \$1.6 million claim for past medical expenses to determine the total value of the economic damage claim. Accordingly, the claim for economic damages would be in the \$29.6 to \$38.4 million range.

36. Mr. Barrett testified that the Chamberlins's claim for non-economic damages would be added to this \$29.6 to \$38.4 million economic damage claim. Mr. Barrett stated that the rule of thumb for trial lawyers is that non-economic damages tend to equal about three times the amount of economic damages. He opined that the claim for non-economic damages would have a high value in this case.

37. Mr. Barrett reviewed the jury verdicts presented by Mr. Leeder. He agreed that they were comparable and supportive of a high value for non-economic damages given that the average non-economic award for the children in those cases was \$19.4 million. Mr. Barrett testified that the jury verdicts supported the conclusion that his valuation of the Chamberlins's damages at \$45 million was very conservative.

38. Mr. Barrett agreed with Mr. Leeder that the \$9,449,500 settlement would not fully compensate Clark and his parents for all the damages they had suffered. Mr. Barrett testified that if the conservative \$45 million value of all damages was the basis for comparison, then the \$9,449,500 settlement represents 21 percent of the value of the damages. Mr. Barrett testified that because only 21 percent of the damages were recovered in the settlement, only 21 percent of the \$1,689,934.88 claim for past medical expenses was recovered, or \$354,886.32. Mr. Barrett testified that it would be reasonable to allocate \$354,886.32 of the settlement to past medical expenses, as a pro rata

share of the actual settlement versus the value of the damages. Mr. Barrett testified that his testimony and the method of making the \$354,886.32 allocation to past medical expenses in this case were consistent with his testimony in other Medicaid lien cases at DOAH.²

39. AHCA did not offer any witnesses or documentary evidence to question the credentials or opinions of either Mr. Leeder or Mr. Barrett. AHCA did not offer testimony or documentary evidence to rebut the testimony of Mr. Leeder and Mr. Barrett as to valuation or the pro rata reduction ratio. AHCA did not offer alternative opinions on the damage valuation or allocation method suggested by either Mr. Leeder or Mr. Barrett, both of whom testified knowledgably and credibly as experienced practitioners.

40. The testimony of Petitioner's two experts regarding the total value of damages was credible, unimpeached, and unrebutted. Petitioner proved that the settlement of \$9,449,500 does not begin to fully compensate Clark, Kelli, and Todd Chamberlin for the full value of their damages. Petitioner's recovery represents only 21 percent of a conservative valuation of the Chamberlins's claims.

41. The undersigned finds that Petitioner has proven by a preponderance of the evidence that 21 percent (the ratio that \$9,449,500 bears to \$45 million) is the appropriate pro rata share of Clark Chamberlin's medical expenses to be applied to determine the amount recoverable by AHCA in satisfaction of its Medicaid lien.

42. ACHA's lien for past medical expenses is \$1,409,615.94. Applying the 21 percent pro rata ratio to this total yields \$296,019.35, which is the portion

² Like Mr. Leeder, Mr. Barrett used the total amount of past medical expenses, \$1,689,934.88, to calculate AHCA's proportional recovery of its Medicaid lien. The correct amount of the AHCA Medicaid lien was \$1,409,615.94. Twenty-one percent of \$1,409,615.94 is \$296,019.35.

of the settlement representing reimbursement for past medical expenses and the amount recoverable by AHCA for its lien.³

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569, 120.57(1), and 409.910(17), Fla. Stat.

44. AHCA is the agency authorized to administer Florida's Medicaid program. § 409.902, Fla. Stat.

45. As a condition for receipt of federal Medicaid funds, states are required to seek reimbursement for medical expenses from Medicaid recipients who later recover from legally liable third parties.

46. By accepting Medicaid benefits, Medicaid recipients automatically subrogate their rights to any third-party benefits for the full amount of Medicaid assistance provided by Medicaid and automatically assign to AHCA the right, title, and interest to those benefits, other than those excluded by federal law. Section 409.910(6)(c) creates an automatic lien on any such judgment or settlement with a third party for the full amount of medical expenses paid to the Medicaid recipient. However, AHCA's recovery is limited to those proceeds allocable to past medical expenses. *See Giraldo v. Ag. for Health Care Admin*, 248 So. 3d 53 (Fla. 2018)(under federal law AHCA may only reach the past medical expenses portion of a Medicaid recipient's tort recovery to satisfy its Medicaid lien).

47. Section 409.910(11)(f) limits AHCA's recovery for a Medicaid lien to the lesser of its full lien or one-half of the total award, after deducting attorney's fees of 25 percent of the recovery and all taxable costs, not to

³ In keeping with the testimony of his experts, Petitioner, in his Proposed Final Order, contended that the amount allocable to AHCA was \$354,886.32, or 21 percent of *all* past medical expenses, including the \$280,318.94 paid by private insurance. The undersigned has corrected this number to include only 21 percent of the expenses covered by AHCA's Medicaid lien.

exceed the total amount actually paid by Medicaid on the recipient's behalf. In this case, application of the formula would result in AHCA recovering the full amount of the lien.

48. However, section 409.910(17)(f) provides a method by which a Medicaid recipient may contest the amount designated as recovered Medicaid expenses payable under section 409.910(11)(f). To successfully challenge the amount payable to AHCA, the recipient must prove, by a preponderance of the evidence, that a lesser portion of the total recovery should be allocated as reimbursement for past medical expenses than the amount calculated by AHCA pursuant to the formula.

49. The pro rata approach has been accepted in Florida cases where the Medicaid recipient has presented competent, substantial evidence to support the allocation of a smaller portion of a settlement for past medical expenses than the portion claimed by AHCA. *Ag. for Health Care Admin. v. Rodriguez*, 294 So. 3d 441 (Fla. 1st DCA 2020); *Bryan v. Ag. for Health Care Admin.*, 291 So. 3d 1033 (Fla. 1st DCA 2020); *Mojica v. Ag. for Health Care Admin.*, 285 So. 3d 393 (Fla. 1st DCA 2019); *Eady v. State*, 279 So. 3d 1249 (Fla. 1st DCA 2019).

50. Where uncontradicted testimony is presented by the recipient, the factfinder must have a "reasonable basis in the record" to reject it. *Giraldo*, 248 So. 3d at 56, *quoting Wald v. Grainger*, 64 So. 3d 1201, 1205-06 (Fla. 2011). In the instant case, AHCA has provided no reasonable basis to reject the testimony of Mr. Leeder and Mr. Barrett.

51. Petitioner proved by a preponderance of the evidence that the settlement proceeds of \$9,449,500 represent only 21 percent of Petitioner's claim valued at \$45 million, which both testifying attorneys reasonably believed was a very conservative valuation. Therefore, it is concluded that AHCA's full Medicaid lien amount should be reduced by the percentage that Petitioner's recovery represents of the total value of Petitioner's claim.

52. The application of the 21 percent ratio to the Medicaid lien amount of \$1,409,615.94 results in \$296,019.35. This amount represents that share of the settlement proceeds fairly and proportionately attributable to expenditures that were actually paid by AHCA for Petitioner's past medical expenses.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED that:

The Agency for Health Care Administration is entitled to \$296,019.35 in satisfaction of its Medicaid lien.

DONE AND ORDERED this 15th day of April, 2021, in Tallahassee, Leon County, Florida.



LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, 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 of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.