STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LARRY J. GRIFFIS,

Petitioner,

vs. Case No. 15-3849MTR

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

Pursuant to notice, a final hearing was conducted in this case on September 9, 2015, in Tallahassee, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Joel R. Foreman, Esquire
Foreman, McInnis and Associates, P.A.
Post Office Box 550
Lake City, Florida 32056-0550

For Respondent: David N. Perry, Esquire
Xerox Recovery Service, Inc.
2073 Summit Lake Drive, Suite 300
Tallahassee, Florida 32317

STATEMENT OF THE ISSUE

The issue in this case is the amount of money to be reimbursed to Respondent, Agency for Health Care Administration, for medical expenses paid on behalf of Petitioner, Larry J.

Griffis, from a personal injury claim settlement received by Petitioner from a third party.

PRELIMINARY STATEMENT

Petitioner filed a Petition to Contest Calculation of Recovered Medical Expense Damages with the Division of Administrative Hearings on July 7, 2015. The Petition challenges the Agency's lien for recovery of medical expenses paid by Medicaid in the sum of $48,640.57. The basis for Griffis' challenge is his assertion that the application of section 409.910(17(b), Florida Statutes, warrants reimbursement of a lesser portion of the total third-party settlement proceeds than the lien amount asserted by the Agency. (Unless specifically stated otherwise herein, all references to the Florida Statutes will be to the 2015 version.)

At the final hearing, Griffis called one witness, Stephen A. Smith, Esquire, and offered ten exhibits into evidence, all of which were accepted. The Agency did not call any witnesses or offer any exhibits into evidence. The parties advised that a transcript of this proceeding would be ordered. By rule, the parties have ten days after the transcript is filed at DOAH to submit proposed final orders. The Transcript was filed on October 1, 2015. Each of the parties timely filed a Proposed Final Order, and each order was considered in the preparation of this Final Order.

FINDINGS OF FACT

1. Griffis was severely injured in an accident occurring on April 29, 2012. The accident occurred generally as follows: Griffis owned and operated a large truck with a long aluminum dump trailer attached. He hauled hazardous waste and other materials for a living. At the end of each job, Griffis would raise the dump trailer for the purpose of cleaning out any residual material. On the date of the accident, Griffis did not clean his trailer in the usual because of some obstruction on that date. Instead, he drove out into a field next to his house to clean the trailer. When Griffis raised the trailer to clean it, he failed to notice electrical lines just above his trailer. He raised the trailer into the lines, resulting in an extremely high voltage of electricity running through his body.

2. As a result of the accident, Griffis was transported to the burn unit at Shands hospital in Gainesville for treatment of his extensive injuries. He had over 50 medical procedures while at Shands, including debridement, skin grafts, tracheostomies, multiple chest tubes, etc. He had 19 different complications while in the hospital, including infections and kidney failure. Over 30 percent of his body surface area was burned; 23 percent of those burns were third degree. While undergoing treatment, Shands gave him only a 22 percent chance of surviving. Griffis remained in the hospital for three and one half months.

3. The medical bills for Griffis' treatment totaled Griffis cost $1,363,285.65. Medicaid paid $48,640.57 of that total amount. The Veterans Administration (VA) paid $275,911.87. Shands was eventually paid $324,552.44 of its charges and wrote off over $1 million.

4. Griffis filed a lawsuit against Suwannee Valley Electric Cooperative, Inc. ("Suwannee"), seeking payment of economic and non-economic damages related to Suwannee's alleged liability for the accident. After negotiations and mediation, a settlement was reached whereby Griffis was to receive the sum of $500,000 from Suwannee in full settlement of all his claims.

5. After the settlement was reached between Griffis and Suwannee, the Agency attempted to enforce its lien, seeking repayment of the entire amount it had paid. Griffis, believing that less than the lien amount was actually owed, filed a Motion for Order Apportioning Damages as part of his pending lawsuit against Suwannee. The purpose of the motion was not to have the circuit court judge determine the amount of the Agency's lien. The motion was filed to obtain an Order that would apportion the settlement among the lawful elements of damages to which Griffis was entitled. A hearing on the motion was set for April 14, 2015, before Circuit Court Judge Andrew J. Decker, III. The Agency was served a copy of the motion and the notice of hearing.

6. The Agency filed an objection to the motion, seeking to relieve the circuit court of jurisdiction in favor of the Division of Administrative Hearings. See § 409.910 (17)(b), Fla. Stat. Griffis replied to the Agency's objection, stating that "the purpose of the Motion is to differentiate or allocate the settlement among Mr. Griffis' different elements of damages [rather than] asking this Court to resolve a Medicaid lien dispute."

7. At the Circuit Court hearing on Griffis' motion, the Agency made an appearance and, in fact, cross-examined the expert witness who testified. The only testimony provided at that hearing was from retired District Court of Appeal Judge Edwin B. Browning, Jr. Judge Browning provided expert testimony as to the value of Griffis' claim, which he set at $6 million. Mr. Smith also provided some argument in support of Griffis' claim, but as an attorney, rather than a sworn witness.

8. Judge Decker took the $6 million figure, plus economic damages in the sum of $211,518, plus past medical expenses of $324,552.44 for a total of $6,536,070.44. That was then divided into the $500,000 settlement figure amount. That resulted in a factor of 7.649 percent, which, applied to the "value of the case" amount, resulted in a figure of $458,919.49. Applying the factor to economic damages resulted in an amount of $16,179.01.

The past medical expenses amount, once factored, resulted in a figure of $24,825.01.[1/]

9. After hearing the evidence presented at his motion hearing, Judge Decker entered an Order dated April 21, 2015, establishing the past medical expenses amount, i.e., the Agency's lien, at $24,901.50. The Order did not address future medical expenses because they were not sought by Petitioner. Inasmuch as his future medical costs would be paid by VA, his attorneys did not add potential medical expenses to the claim.[2/]

10. A copy of Judge Decker's Order was received into evidence in the instant proceeding (although, pursuant to section 90.202, Florida Statutes, it could have been officially recognized by the undersigned Administrative Law Judge). The Order, along with Griffis' other exhibits and Mr. Smith's testimony, constituted the evidence in this matter.

CONCLUSIONS OF LAW

11. The Division has jurisdiction over the parties and subject matter in this case. §§ 120.569, 120.57(1)(k), and 409.910(17), Fla. Stat.

12. The Agency is the state agency authorized to administer Florida's Medicaid program. § 409.902, Fla. Stat.

13. At issue in this proceeding is section 409.910, entitled: Responsibility for payments on behalf of Medicaid-

eligible persons when other parties are liable. The statute states in pertinent part:

> (1) It is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical care are primary to medical assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, it is the intent of the Legislature that Medicaid be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid. . . .
>
> * * *
>
> (11)(f) Notwithstanding any provision in this section to the contrary, in the event of an action in tort against a third party in which the recipient or his or her legal representative is a party which results in a judgement, award, or settlement from a third party, the amount recovered shall be distributed as follows:
>
> 1. After attorney's fees and taxable costs as defined by the Florida Rules of Civil Procedure, one-half of the remaining recovery shall be paid to the agency up to the total amount of medical assistance provided by Medicaid.
>
> * * *
>
> (17)(b) A recipient may contest the amount designated as recovered medical expense damages payable to the agency pursuant to a formula specified in paragraph 11(f) by filing a petition under chapter 120 . . . . The petition shall be filed with the

> Division of Administrative Hearings. For purposes of chapter 120, the payment of funds to the agency or the placement of the full amount of the third-party benefits in the trust account for the benefit of the agency constitutes final agency action and notice thereof. Final order authority for the proceedings specified in this subsection rests with the Division of Administrative Hearings. This procedure is the exclusive method for challenging the amount of third-party benefits payable to the agency. In order to successfully challenge the amount payable to the agency, the recipient must prove, by clear and convincing evidence, that a less portion of the total recovery should be allocated as reimbursement for past and future medical expenses than the amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f) or that Medicaid provided a lesser amount of medical assistance than that asserted by the agency.

14. The amount to be recovered for Medicaid medical expenses from a judgment, award, or settlement from a third party is determined by the formula set forth in section 409.910(11)(f), above, which sets that amount at one-half of the total recovery, after deducting attorney's fees of 25 percent of the recovery and all taxable costs, up to but not to exceed the total amount actually paid by Medicaid on the recipient's behalf. Ag. for Health Care Admin. v. Riley, 119 So. 3d 514, 515 n.3 (Fla. 2d DCA 2013).

15. Application of the formula to Griffis' $500,000 settlement results in a maximum reimbursement amount of $187,500, which exceeds the Medicaid lien sought by the Agency.

Under the formula, the Agency would receive the sum of $48,640.58.

16. Where, as in this case, Petitioner is claiming that a lesser amount should be paid to Medicaid, it must prove its claim by the clear and convincing evidence standard set forth in subsection (17)(b), above. Clear and convincing evidence "requires more proof that a 'preponderance of the evidence' but is less than 'beyond a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). "Although [the clear and convincing] standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1st DCA 1991).

17. In this case, the administrative procedure created by section 409.910(17)(b) is the means for determining whether a lesser portion of a total recovery should be allocated as reimbursement for medical expenses in lieu of the amount calculated by application of the formula in section 409.910(11)(f).

18. Here, Griffis is not alleging that Medicaid provided a lesser amount of medical assistance than asserted by the Agency. He is saying that a lesser portion of the total recovery should be allocated for past medical expenses. By clear and convincing evidence, i.e., an Order from Judge Andrew J. Decker, III, in

the Circuit Court of the Third Judicial Circuit, in and for Hamilton County, Florida, Case No. 13-229-CA, Griffis established that the amount of the settlement allocated for past medical expenses is $24,901.50.

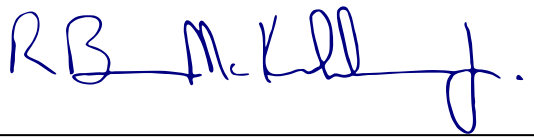
19. The apportionment made by Judge Decker is reasonable, reliable, and based upon competent and substantial evidence. It is therefore appropriate for the Administrative Law Judge to accept and approve that apportionment. See, e.g., the well-reasoned decision by Administrative Law Judge Early in Holland v. Ag. for Health Care Admin., Case No. 14-2520MTR (Fla. DOAH Sept. 29, 2014).

ORDER

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

ORDERED that Petitioner, Larry J. Griffis, pay to Respondent, Agency for Health Care Administration, the sum of $24,901.50.

DONE AND ENTERED this 30th day of October, 2015 in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of October, 2015.

ENDNOTES

[1/] This figure may not be mathematically correct, but it is the figure the parties have agreed to use for purposes of this proceeding.

[2/] Had future medical expenses been added to Griffis' claim, the medical expenses portion of the allocated settlement would have been higher. There is no requirement, however, that future medical expenses be included where none is projected.

COPIES FURNISHED:

Alexander R. Boler, Esquire
Xerox Recovery Services Group
2073 Summit Lake Drive, Suite 300
Tallahassee, Florida 32317
(eServed)

Joel F. Foreman, Esquire
Foreman, McInnis and Associates, P.A.
Post Office Box 550
Lake City, Florida 32056-0550
(eServed)

Stuart Fraser Williams, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

David N. Perry, Esquire
Xerox Recovery Services, Inc.
2073 Summit Lake Drive, Suite 300
Tallahassee, Florida 32317
(eServed)

Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

Elizabeth Dudek, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.