

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOSIE THOMAS, AS THE MOTHER AND
NATURAL GUARDIAN OF CIARA
THOMAS, A MINOR,

Petitioner,

Case No. 16-0690MTR

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

FINAL ORDER

On June 7, 2016, D. R. Alexander, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a hearing in this matter by video teleconferencing at sites in St. Petersburg and Tallahassee, Florida.

APPEARANCES

For Petitioner: Stephen H. Haskins, Esquire
Law Offices of Lucas/Magazine, PLLC
8606 Government Drive
New Port Richey, Florida 34654-5510

For Respondent: Alexander R. Boler, Esquire
Xerox Recovery Services Group
Suite 300
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Tallahassee, Florida 32317-7949

STATEMENT OF THE ISSUE

The issue is the amount payable to Respondent, Agency for Health Care Administration (Respondent or AHCA), in satisfaction

of Respondent's Medicaid lien from a settlement offer received on behalf of Petitioner, Ciara Thomas.

PRELIMINARY STATEMENT

In this proceeding, Josie Thomas, the mother of Ciara, was notified by AHCA's collections contractor that she owed \$37,435.21 in satisfaction of Ciara's Medicaid lien for medical benefits paid to her, to be paid from the proceeds of a settlement offer she has received as compensation for burn injuries Ciara suffered when she accidentally fell into a bathtub and was scalded with hot water. When ACHA's claim could not be settled informally, on February 10, 2016, Petitioner filed with DOAH a Petition [to] Determine the Amount of Medicaid's Lien, by which she challenged AHCA's lien for recovery of medical expenses paid by Medicaid. The basis for the challenge was the assertion that the application of section 409.910(17)(b), Florida Statutes, warranted reimbursement of a lesser portion of the third-party settlement proceeds than the amount calculated by AHCA pursuant to the formula in section 409.910(11).

At the final hearing, Josie Thomas testified on behalf of her daughter and presented the testimony of Keith Ligori, a trial attorney accepted as an expert witness in valuation of damages in personal injury cases. Petitioner's Exhibits 1 and 2 were accepted in evidence. AHCA offered Exhibit A, which was

accepted in evidence. Pursuant to a request by AHCA, that exhibit has been sealed.

A one-volume Transcript of the hearing was prepared. Proposed final orders were filed by the parties and have been considered by the undersigned in the preparation of this Final Order.

FINDINGS OF FACT

1. Ciara Thomas is a six-year-old female who currently resides in St. Petersburg, Florida.

2. Respondent is the state agency authorized to administer Florida's Medicaid program. See § 409.902, Fla. Stat.

3. On October 18, 2012, Ciara, then two and one-half weeks shy of her third birthday, was severely injured when she fell into a bathtub and was scalded by hot water. At that time, Ciara, her mother, and a brother were tenants of a residential dwelling located at 8181 91st Terrace, Seminole, Florida, which was owned by Selvie Berberi, the landlord. Ciara suffered from second- and third-degree burns over 65 percent of her total body surface area, and in particular, to her back, buttocks, chest, bilateral tower extremities, bilateral upper extremities, and genitals.

4. Ciara received extensive medical care and treatment for her scald burns at Tampa General Hospital, where she was hospitalized from October 18, 2012, through January 9, 2013.

The parties have stipulated that through the Medicaid program, AHCA spent \$174,675.05 on behalf of Ciara.

5. Because of the extensive nature of the burns on her lower extremities and entire back, Ciara has undergone five skin grafts. She has completed physical therapy in the burn center and does not anticipate any further medical treatment until she is fully grown.

6. Ciara has very visible scars over much of her body, which will not likely improve over time. The skin feels rubbery, with no smooth texture, and it is affected by the weather. Whenever she is outside, Ciara must be completely covered with clothing. She attends school but cannot play outdoors due to potential injury or infection. Because of the condition of her skin, she is subjected to stares by other persons and students, causing her to be extremely self-conscious.

7. Petitioner filed suit in Pinellas County Circuit Court against the landlord in negligence for her failure to provide safe and proper working plumbing to the rental home. Among other things, the water heater had been set far above the legal limits of 120 degrees. During the pendency of that litigation, the landlord's homeowner's insurance company offered payment in settlement in the amount of \$101,000.00, representing the \$100,000.00 coverage limit for bodily injury liability, and

\$1,000.00 as payment of the coverage limit of the policy's medical payments provisions. At hearing, Ciara's mother indicated that she intends to accept the offer if it is approved by the court.

8. AHCA contends it should be reimbursed for Medicaid expenditures on behalf of Petitioner pursuant to the formula set forth in section 409.910(11)(f). Under the formula, the lien amount is computed by deducting a 25 percent attorney's fee (\$25,250.00) and taxable costs (\$879.59) from the \$101,000.00 recovery, which yields a sum of \$74,870.41. This amount is then divided by two, which yields \$37,435.21. Under the statute, Respondent is limited to recovery of the amount derived from the statutory formula or the amount of the lien, whichever is less. Petitioner agrees that under the statutory default allocation, AHCA would be entitled to \$37,435.21.

9. Section 409.910(17)(b) provides that a Medicaid recipient has a right to rebut the default allocation described above. Utilizing that provision, Petitioner asserts that reimbursement should be limited to the same ratio as her recovery amount is to the full or total value of her damages. Under this theory, Petitioner contends that had her case gone to trial, a jury would have awarded at least \$3.5 million, or the mid-point between \$3 million and \$4 million. Because the settlement represents a recovery of 2.9 percent of the valuation

of her total damages, Petitioner contends she should pay 2.9 percent of AHCA's past medical expenses, or \$5,066.00, to satisfy the Medicaid lien. The statute requires that Petitioner substantiate her position by clear and convincing evidence.

10. To support the proposed full value of damages, Petitioner presented the testimony of Keith Ligori, a trial attorney in Tampa for the last 15 years, who specializes in all types of personal injury cases. Mr. Ligori has handled similar cases "numerous times," and on a daily basis he makes assessments of the valuation of potential claims. He is familiar with the reasonable valuation of personal injury cases in the greater Tampa Bay area, including Pinellas County.

11. Mr. Ligori presented fact and opinion testimony on the issue of valuation of damages. Before forming his opinion on damages in this case, Mr. Ligori reviewed the medical records, including photographs of Ciara, interviewed the child and her mother, and discussed the case with her trial counsel. He also relied on his training and experience and familiarity with other cases in the Tampa Bay area.

12. Based on his review of the case, Mr. Ligori valued total damages, conservatively, at \$3.5 million. This figure took into account non-economic factors, including mental anguish, loss of ability or capacity to enjoy life, disability, and scarring and disfigurement, and economic damages consisting

of the medical expenses paid by AHCA. Mr. Ligori testified that if he was actually trying the case before a jury, he would seek damages of between \$5 million and \$10 million. The undersigned finds the valuation of damages at \$3.5 million to be credible and persuasive and is hereby accepted.

13. In summary, by clear and convincing evidence, Petitioner has demonstrated that, conservatively, the full value of her damages is \$3.5 million. The settlement amount of \$101,000.00 is 2.9 percent of the total value of Petitioner's damages. The application of this factor to total medical expenses incurred by AHCA results in an allocation of \$5,066.00 as a reasonable payment of the Medicaid lien.

CONCLUSIONS OF LAW

14. As a condition for receipt of federal Medicaid funds, states are required to seek reimbursement for medical expenses incurred on behalf of beneficiaries who later recover from third-party tortfeasors. See Ark. Dep't of Health & Hum. Servs. v. Ahlborn, 547 U.S. 268 (2006). States may satisfy this requirement by enacting statutes that impose Medicaid liens to recover the portion of settlements that represent medical expenses.

15. Consistent with federal law, section 409.910 authorizes and requires the State to be reimbursed for Medicaid funds paid for medical expenses when the beneficiary

subsequently receives a settlement from a third-party. The statute creates an automatic lien on any such settlement for the medical assistance provided by Medicaid. See § 409.910(6)(c), Fla. Stat.

16. Section 409.910(11)(f) establishes a formula to determine the amount of Medicaid medical assistance benefits the State is to be reimbursed. "The formula operates by reducing the gross settlement amount by 25% to account for attorneys' fees, then subtract taxable costs, then divides that number by two, and awards Medicaid the lesser of the amount of benefits paid or the resulting number." Mobley v. State, Ag. for Health Care Admin., 181 So. 3d 1233, 1235 n.1 (Fla. 1st DCA 2015).

17. The application of the apportionment formula in section 409.910(11)(f)1. to the \$101,000.00 settlement at issue yields attorney's fees of \$25,250.00, less taxable costs of \$879.59, with \$74,870.00.41 of the recovery amount remaining. One-half of this is \$37,435.21, which is less than the \$174,675.05 of Medicaid assistance that Respondent provided for Petitioner. Accordingly, if the statutory formula applies to determine the reimbursement due in this case, Respondent would be entitled to \$37,435.21, as the amount of medical assistance provided is greater than the medical expense portion of the settlement.

18. Under section 409.917(17) (b), a Medicaid recipient has the right to rebut this presumptively valid statutory default allocation in an administrative proceeding. This is accomplished by establishing, through clear and convincing evidence, that either a lesser portion of the total recovery should be allocated as a medical expense reimbursement than is calculated under the statutory formula, or that Medicaid actually provided a lesser amount of medical assistance than has been asserted by Respondent. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997).

19. Petitioner's position is that reimbursement for past medical expenses should be limited to the same ratio as Petitioner's recovery amount to the total value of damages, as described in finding of fact 12. That ratio is 2.9 percent and would limit the amount of the Medicaid lien to \$5,066.00.

20. The evidence in this case is clear and convincing that the allocation for Petitioner's past medical expenses in the amount of \$5,066.00 constitutes a fair, reasonable, and accurate share of the settlement for the total recovery for those past medical expenses paid by Medicaid. Therefore, any such Medicaid lien is limited to the same amount.

DISPOSITION

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

ORDERED that Respondent is entitled to reimbursement in the amount of \$5,066.00 in satisfaction of its Medicaid lien.

DONE AND ORDERED this 15th day of August, 2016, in Tallahassee, Leon County, Florida.

D.R. Alexander

D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of August, 2016.

COPIES FURNISHED:

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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.