

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MELISSA FIGUEROA,

Petitioner,

vs.

Case No. 17-3117MTR

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

FINAL ORDER

On February 1, 2018, a final hearing was held in this case before J. Lawrence Johnston, an Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH). It was conducted using video teleconferencing between sites in Tampa and Tallahassee.

APPEARANCES

For Petitioner: Joshua T. Chilson, Esquire
Johnson, Pop, Bokor, Ruppel, & Burns, LLP
911 Chestnut Street
Clearwater, Florida 33782

For Respondent: Elizabeth A. Teegen, Esquire
Office of the Attorney General
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STATEMENT OF THE ISSUE

The issue is the amount of the Petitioner's personal injury settlement proceeds that should be paid to the Agency for Health

Care Administration (AHCA) to satisfy its Medicaid lien under section 409.910, Florida Statutes (2016).^{1/}

PRELIMINARY STATEMENT

On May 26, 2017, Melissa Figueroa filed a Petition to Determine Medicaid Lien. After being placed in abeyance for a time, the final hearing was scheduled, and the parties filed a Joint Pre-hearing Stipulation. At the hearing, the Petitioner and her attorney testified, and the Petitioner's Exhibits 1 through 8 were received in evidence. AHCA cross-examined but did not call any witnesses or introduce any other evidence.

After the hearing, the Transcript was filed, and the parties filed proposed final orders that have been considered.

FINDINGS OF FACT

1. The Petitioner's right hand and wrist were cut by glass in the bathroom of her apartment in March 2012. Her injuries included damage to the tendons and nerves. She was hospitalized and received medical care and treatment, which Medicaid paid in the amount of \$4,348.45. The Petitioner also personally owes \$123 for physical therapy she received.

2. The Petitioner sued the owner of the apartment, who vigorously contested liability and raised several affirmative defenses alleging that the Petitioner's negligence or

recklessness was wholly or partially responsible for her injuries and that she assumed the risk.

3. The Petitioner's damages were substantial because she lost the effective use of her right hand. She applied and was approved for Social Security supplemental security income benefits, subject to periodic reviews of her disability status. She presented evidence in the form of her and her attorney's testimony and a report prepared by a vocational evaluation expert that she will suffer lost wages in the amount of approximately a million dollars, calculated by assuming she would have worked full-time earning \$12-15 an hour until age 70, but for her accident, and assuming she cannot be gainfully employed in any capacity as a result of her injury. While that amount of lost wages might be overstated, the Petitioner presented evidence in the form of her attorney's testimony and a supporting affidavit of another attorney with experience in personal injury case valuations that the monetary value of her damages was no less than approximately \$550,000.^{2/} AHCA's cross-examination did not reduce the persuasiveness of the Petitioner's evidence, and AHCA presented no contrary evidence.

4. In March 2017, the Petitioner settled her lawsuit for a mere \$55,000 because of her concern that a jury would find for the defendant or reduce the recoverable damages due to comparative negligence. The Petitioner knew at the time of her

settlement that AHCA was claiming a \$4,348.45 Medicaid lien on the settlement proceeds.

5. The Petitioner offered AHCA \$434.85 in full satisfaction of the Medicaid lien claim. AHCA declined and asserts its entitlement to the full amount of the lien claim.

6. The Petitioner's settlement agreement included an allocation of \$434.85 to AHCA's Medicaid lien, \$123 to the other past medical expenses, and the rest to other components of damages (which did not include any future medical expenses). AHCA was not a party to the settlement and did not agree to that allocation.

7. The Petitioner's attorney testified that the Petitioner's proposed allocation is fair and reasonable and introduced the concurring affidavit of another attorney. AHCA did not present any evidence but argued that the Petitioner did not prove that AHCA's Medicaid lien should be reduced and that, as a matter of law, AHCA was entitled to the claimed lien.

CONCLUSIONS OF LAW

8. AHCA would be entitled to the full amount of its claimed lien claim under section 409.910(11)(f), Florida Statutes. Under that statute, AHCA is entitled to reimbursement of the full amount of its Medicaid expenditures out of third-party recoveries, up to a maximum calculated by reducing the total recovery by taxable costs and attorneys' fees calculated as 25

percent of the recovery, and halving the remainder of the recovery. In this case, the statutory formula's maximum would be \$20,625, which is half of the difference between the \$55,000 settlement and \$13,750 for attorneys' fees (there being no evidence of any taxable costs to subtract). The full amount of AHCA's claimed lien is well within the statutory maximum.

9. Section 409.910(17)(b) allows a Medicaid recipient to rebut the statutory maximum calculated under section 409.910(11)(f) by proving, "by clear and convincing evidence, that a lesser 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."

10. Glosses have been placed on the statute to strike future medical expenses from consideration^{3/} and to reduce the standard of proof from "clear and convincing" to a "preponderance of the evidence" in order to harmonize the statute with recent federal court decisions. See Museguez, etc., et al. v. Ag. for Health Care Admin., Case 16-7379MTR (Fla. DOAH Sept. 19, 2017).^{4/}

11. Applying the gloss to section 409.910(17)(b), the Petitioner proved, 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 under section 409.910(11)(f). Specifically, the Petitioner's evidence was that it is reasonable and appropriate to allocate ten percent of the Petitioner's settlement as reimbursement for past medical expenses. This is the percentage represented by the relationship between the Petitioner's settlement, which was reduced primarily due to serious questions as to the third party's liability, and the full amount of the Petitioner's damages. AHCA presented no evidence to the contrary.

12. AHCA argues that it is entitled to the full amount of its claimed lien because section 409.910(6)(a)-(c) fixes the lien on third-party benefits, subrogates the Medicaid recipient's third-party benefits, and assigns those benefits to AHCA, and because the full amount of the lien is less than the amount calculated under section 409.910(11)(f).

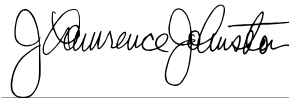
13. AHCA's proposed statutory interpretation is rejected. Section 409.910(17)(b) clearly affords the Petitioner a procedure for establishing that the amount of AHCA's lien should be reduced from the full amount claimed so that it would not be paid from portions of the settlement recovery other than the portion allocated to past medical expenses (applying the gloss to account for the federal decisions), contrary to the federal Medicaid anti-lien law and the federal decisions interpreting it. See Ark. Dep't of Health and Human Servs. v. Ahlborn, 547 U.S. 268

(2006); and Wos v. E.M.A. ex rel. Johnson, 568 U.S. 627, 133 S. Ct. 1391, 185 L. Ed. 2d 471 (2013). Neither the statutes nor the courts have provided clear guidance on how to determine the proper allocation. While the pro rata allocation proven by the Petitioner in this case may not be the only acceptable way to do it in every case, it is the only way supported by evidence in this case, and is reasonable and appropriate. See Willoughby v. Ag. for Health Care Admin., Case 15-3276MTR (Fla. DOAH Dec. 4, 2017).

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is determined and ordered that the amount of AHCA's Medicaid lien payable from the Petitioner's settlement is \$434.85.

DONE AND ORDERED this 28th day of March, 2018, in Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of March, 2018.

ENDNOTES

^{1/} Statutory references are to the 2016 codification of the Florida Statutes, which was in effect at the time of the Petitioner's settlement. See Cabrera v. Ag. for Health Care Admin., Case No. 17-4557MTR, 2018 Fla. Div. Admin. Hear. LEXIS 43 n.1 (Fla. DOAH Jan. 23, 2018) (citing Suarez v. Port Charlotte HMA, 171 So. 3d 740 (Fla. 2d DCA 2015)).

^{2/} It is not clear how, specifically, this damage estimate factored in the Social Security supplemental security income benefits.

^{3/} This gloss would not change the result since there was no evidence of any future medical expense component in the Petitioner's damages.

^{4/} This gloss is preferable, in the opinion of this ALJ, to the holding in Smathers v. Agency for Health Care Administration, Case No. 16-3590MTR (Fla. DOAH Sept. 13, 2017), that DOAH no longer has jurisdiction in light of the federal decisions.

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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.