

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AMANDA SOTO,

Petitioner,

vs.

Case No. 17-4556MTR

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

FINAL ORDER

Pursuant to notice to all parties, a final hearing was held in this case before the Honorable R. Bruce McKibben, Administrative Law Judge, of the Division of Administrative Hearings, by way of video teleconference on October 9, 2017, with sites in Tallahassee and Tampa, Florida.

APPEARANCES

For Petitioner: Floyd B. Faglie, Esquire
Staunton and Faglie, P.L.
189 East Walnut Street
Monticello, Florida 32344

For Respondent: Alexander R. Boler, Esquire
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STATEMENT OF THE ISSUE

The issue to be decided in this proceeding is the amount to be paid to Respondent, Agency for Health Care Administration

("AHCA" or the "Agency"), from the proceeds of a personal injury settlement received by Petitioner, Amanda Soto (referred to herein as either "Petitioner" or "Soto"), to reimburse Medicaid for expenditures made on her behalf.

PRELIMINARY STATEMENT

On November 20, 2015, Soto filed a Petition to Determine Amount Payable to AHCA. The case was docketed as DOAH Case No. 15-6609MTR and assigned to the undersigned. On November 30, 2015, Soto filed a motion to abate the proceedings due to ongoing legal proceedings against some of the defendants in Soto's malpractice action. The case was abated. On August 11, 2017, Soto filed a motion seeking to reopen the abated case. The case was opened with the style and case number appearing above. On October 3, 2017, a motion to stay or abate the final hearing was filed by the Agency. Soto objected to the motion. After a telephonic hearing at which both parties' positions were heard, the undersigned denied the motion. The final hearing was held as scheduled.

At the final hearing, Soto called two witnesses, each of whom was accepted as an expert in the valuation of damages: Arthur Skafidas, Esquire, and R. Vinson Barrett, Esquire. Petitioner's Exhibits 1 through 7 were admitted into evidence. AHCA did not call any witnesses; its Exhibit A was admitted into evidence. A pre-hearing stipulation was filed by the parties;

the stipulations contained therein are also admitted into evidence.

A transcript of the final hearing was ordered. It was filed at the Division of Administrative Hearings ("DOAH") on November 3, 2017. Proposed final orders ("PFOs") were due within 10 days after the Transcript was filed. The parties requested and were granted an additional four days to submit PFOs. Each party timely filed its PFO and each was duly considered in the drafting of this Final Order.

FINDINGS OF FACT

The following findings of fact are derived from the exhibits and oral testimony at final hearing, as well as the stipulated facts between the parties.

1. When Soto was 11-years old, she suffered extensive physical harm as a result of negligent medical care. She has bi-lateral, no-light blindness, a severe seizure disorder, hemiparesis/right-side weakness, and significant loss of cognitive abilities. Now 19-years old, Soto requires daily one-on-one care at home and school. She will never regain her sight and suffers from depression because of her physical condition.

2. This tragedy commenced when Soto, a normally developing adolescent, suffered a blow to her eye while swimming. She was taken to a hospital emergency room where she was diagnosed with sinusitis and prescribed oral antibiotics. Despite complying

with her doctors' orders, Soto continued to experience ever-progressing problems. About nine weeks after her first visit, Soto was again taken to the emergency room for treatment. Her condition was so severe at that time that she was transported to a specialty hospital for further evaluation and treatment.

3. It was ultimately determined that two large abscesses had formed in Soto's brain, which caused her to experience a stroke-like episode. Actions were then taken by her physicians in an attempt to drain the abscesses. The additional medical treatment failed to alleviate Soto's problems, and her condition today is as described above.

4. Soto sued several healthcare providers for her injuries. Her mother also joined in the lawsuit, seeking loss of consortium. Ultimately, negotiations between Soto's attorneys and the defendants resulted in two settlements. One occurred while Soto was still a minor and had to be approved by the Court; the second occurred after Soto reached the age of majority.

5. The value of Soto's economic damages was established at \$12,738,125, exclusive of pain and suffering. Her damages for pain and suffering was estimated at more than \$20 million. After extensive litigation, Soto eventually settled with the defendants for \$2,650,000. After deduction of attorneys' fees in the sum of \$1,060,000 and costs of litigation totaling

\$215,864.37, Soto received a lump sum settlement in the amount of \$1,374,135.63 (the "Net Settlement Amount"). There was no allocation of the Net Settlement Amount between Soto's injuries and her mother's loss of consortium claim. The Net Settlement Amount constituted approximately 11.5 percent of the estimated value of Soto's claims.

6. Meanwhile, AHCA's Medicaid program expended \$231,666.01 towards Soto's medical treatments.

7. ACHA asserted a Medicaid lien for the amount it had expended for Soto's care and treatment. The lien was in the amount of \$231,666.01 (the "Lien Amount"). By law, Medicaid is allowed to recover the full amount it expends for care that could be paid by another source, whether the source is insurance coverage, litigation settlements, or other funds.

8. Persons against whom AHCA asserts a Medicaid lien have the right to challenge the amount of the lien. Soto took advantage of that right, resulting in the instant proceeding. In accordance with prescribed laws and rules, Soto placed an amount equal to the Lien Amount into an interest-bearing account before she filed her challenge.

9. Soto asserts that as she received only 11.5 percent of the value of her claim, she only needs to pay AHCA 11.5 percent of the Lien Amount, i.e., \$26,641.59 (\$231,666.01 times 11.5 percent).

10. By the terms of her settlement agreement with the various defendants, Soto is not able to recover any additional money for her injuries. The statute of limitations has passed even if Soto wished to pursue other potential defendants. Thus, the Net Settlement Amount is all that she can ever expect to receive for her injuries.

11. There is no dispute as to the severity or permanent nature of Soto's injuries. A life care plan was created to identify and help deal with the various services that would be necessary to sustain Soto for the rest of her life.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 409.910(17)(b), Fla. Stat. Unless stated otherwise herein, all references to Florida Statutes will be to the 2017 version.

13. AHCA is the state agency with responsibility for administering Florida's Medicaid program. § 409.902, Fla. Stat.

14. Medicaid is a joint state-federal program. States choosing to reimburse enumerated costs of treatment to its citizens may receive federal funds under the program. See Harris v. McRae, 448 U.S. 297, 301 (1980). Participation in the Medicaid program is voluntary, but states which elect to participate must comply with the federal requirements. Id.

15. One of the Medicaid conditions of participation to which states must agree is that the state will seek reimbursement from persons who later recover funds from a third party, e.g., insurance or settlement proceeds. Ark. Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 276 (2006).

16. Section 409.910, Florida Statutes, mandates that a person who receives Medicaid funds must reimburse the state when the recipient receives a settlement in a personal injury case, such as Soto received in the instant case. The statute creates an automatic lien against such a settlement. § 409.910(6)(c), Fla. Stat.; Smith v. Ag. for Health Care Admin., 24 So. 3d 590 (Fla. 5th DCA 2009).

17. A formula was created to determine the distribution of any such settlement by a recipient. The formula, appearing in section 409.910, is as follows:

(11) The agency may, as a matter of right, in order to enforce its rights under this section, institute, intervene in, or join any legal or administrative proceeding in its own name in one or more of the following capacities: individually, as subrogee of the recipient, as assignee of the recipient, or as lienholder of the collateral.

* * *

(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 judgment, 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.
2. The remaining amount of the recovery shall be paid to the recipient.
3. For purposes of calculating the agency's recovery of medical assistance benefits paid, the fee for services of an attorney retained by the recipient or his or her legal representative shall be calculated at 25 percent of the judgment, award, or settlement.
4. Notwithstanding any provision of this section to the contrary, the agency shall be entitled to all medical coverage benefits up to the total amount of medical assistance provided by Medicaid. For purposes of this paragraph, "medical coverage" means any benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under coverage for workers' compensation, personal injury protection, and casualty.

18. Under the statutory formula, there would be sufficient funds in the Net Settlement Amount to satisfy the AHCA Medicaid lien. However, Soto has exercised her right to challenge the amount of the Medicaid lien pursuant to section 409.910(17)(b), which provides:

If federal law limits the agency to reimbursement from the recovered medical

expense damages, a recipient, or his or her legal representative, may contest the amount designated as recovered medical expense damages payable to the agency pursuant to the formula specified in paragraph (11)(f) by filing a petition under chapter 120 within 21 days after the date of payment of funds to the agency or after the date of placing the full amount of the third-party benefits in the trust account for the benefit of the agency pursuant to paragraph (a). 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 designated as recovered medical expenses, the recipient must prove, by clear and convincing evidence, that the portion of the total recovery which should be allocated as past and future medical expenses is less than the amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f). Alternatively, the recipient must prove by clear and convincing evidence that Medicaid provided a lesser amount of medical assistance than that asserted by the agency.^[1/]

19. There is no guidance in the statute as to what the phrase, "that a lesser portion of the total recovery should be allocated," means. Obviously, if a petitioner found that ACHA's math was in error or certain components of the recovery amount

were missing, it could contest the lien amount and show that a "lesser portion" should be allocated as reimbursement. The question, however, is whether a petitioner can simply assert that a different or lesser amount can be allocated for some reason other than AHCA error.

20. In this case, Soto presented evidence that her recovery from a third party was only 11.5 percent of the actual value of her claim. Thus, she reasons, she should only pay 11.5 percent of the Lien Amount. That is, only 11.5 percent of the Lien Amount, totaling \$26,641.59, should be returned to AHCA. AHCA presented no evidence to rebut or contest Soto's contention.

21. The question is then whether Soto proved, by a preponderance of evidence, that a lesser amount should be paid, keeping in mind the Legislature's mandate set forth in section 409.910(1), which states:

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.

22. It is difficult to reconcile the requirement that Medicaid be repaid fully whether or not the recipient is made whole with the theory asserted by Soto that since she only received 11.5 percent, AHCA should also only receive that

proportion. Her unrebutted theory may make sense from her perspective, but it runs afoul of the Legislative mandate.

23. Also militating against Soto's claim is her decision to accept a recovery amount less than the value of her claim. There was no testimony as to whether the outstanding Medicaid claim was considered at the time of the settlement, but clearly AHCA had no input in the settlement or its impact on the Lien Amount. Soto is therefore attempting to unilaterally dictate how much the Medicaid program should accept in payment for its lien.

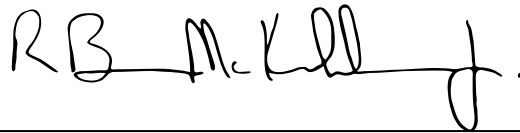
24. In total, Soto presented a very logical and reasonable theory as to why she believes the Lien Amount should be less than asserted by AHCA. That is, the theory was logical from her perspective as the recipient. There is no doubt that Soto agreed to accept far less from the defendants than her actual claim for damages may have been worth. As a result, she did not recover all that she may have been entitled to. However, she did not sufficiently prove that her theory is what the Legislature contemplated in examining what amount should be allocated as past medical expenses for purposes of establishing repayment of a Medicaid lien.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Petitioner, Amanda Soto, shall

pay to Respondent, Agency for Health Care Administration, the sum of \$231,666.01, in settlement of the Medicaid lien.

DONE AND ORDERED this 28th day of November, 2017, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
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 November, 2017.

ENDNOTE

^{1/} Recent case law has established that the preponderance of evidence standard applies to recipients challenging a Medicaid lien amount. Further, collection of settlement funds has been limited to the amount allocated in the settlement for past medical expenses. In the present case, the settlement between Soto and the defendants was not allocated and the entire settlement amount is being considered for purposes of this matter. See Gallardo v. Dudek, Case No. 4:16cv116-MW/CAS, 2017 WL 3081816 (U.S.N.D. Fla. July 18, 2017).

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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.