FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-755

JULIO CESAR CABRERA, as
Personal Representative of the
Estate of Yisell Cabrera
Rodriguez, deceased,

Appellant,

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Appellee.

On appeal from an order of the Division of Administrative Hearings.
Cathy M. Sellers, Judge.

March 26, 2021

B.L. THOMAS, J.

Appellant challenges the dismissal of his petition filed under section 409.910(17)(b), Florida Statutes. We affirm.

Appellant is the father and duly appointed personal representative of the estate of Yisell Cabrera Rodriquez, the deceased. Appellee is the Agency for Health Care Administration, which is the state agency charged with administering the Florida Medicaid program, pursuant to chapter 409, Florida Statutes.

On October 30, 2015, Yisell Cabrera Rodriquez was a passenger in a car that had been rebuilt without passenger side airbags. As a result, Yisell suffered severe injuries when the car was struck by another car, and she tragically died the day after the accident. Yisell's injury-related medical care was paid by Florida's Medicaid program, which totaled $86,491. The Agency asserted a medical lien for this amount pursuant to section 409.910(6)(c)(1), Florida Statutes.

Appellant filed a wrongful death action against the drivers and the companies involved in rebuilding and selling the car without the passenger side airbags. All of the insurers tendered their respective policy limits, and the total amount of third-party benefits received was $140,000. Appellant entered into settlement agreements for the total amount of third-party benefits on July 14, 2017.

The Agency asserted it was owed $51,838.61 in a lien repayment amount after applying the statutory formula under section 409.910(11)(f), Florida Statutes, from the $140,000 that Appellant received in total third-party benefits. Appellant challenged this lien amount, asserting that the method in *Arkansas Department of Health and Human Services v. Ahlborn*, 547 U.S. 268 (2006), should be applied. Under this analysis, only $4,039.17 in past medical expenses would be payable to the Agency. The Agency disagreed and contended that the opportunity to rebut the medical expense allocation under section 409.910(17)(b) was not available where the Medicaid recipient died before third-party benefits were recovered through settlement or other means.

The administrative law judge dismissed Appellant's petition, ruling that the opportunity to challenge the amount of medical expenses under section 409.910(11)(f) was limited to circumstances where the recipient is living at the time the Agency's right to recover third-party benefits vests, and that Florida caselaw held that where the recipient dies before a settlement of an action in tort for third-party benefits is reached, the federal anti-lien statute does not operate to preempt or negate the applicability of section 409.910(11)(f). Thus, the formula in

section 409.910(11)(f) applied and entitled the Agency to recoup $51,838 from its total of $86,491 expended.

Appellant filed a timely notice of appeal and an "Unopposed Motion to Stay Proceedings" pending this Court's final resolution of *Al Batha v. Agency for Health Care Administration*, 263 So. 3d 817 (Fla. 1st DCA 2019). This Court granted the motion. The decision in *Al Batha* was issued on January 14, 2019, and this appeal follows.

Analysis

We review administrative legal conclusions de novo. *Al Batha*, 263 So. 3d at 819. Findings of fact must be supported by competent, substantial evidence. *See* § 120.68(10), Fla. Stat. (2019).

The Agency's right to reimbursement from third-party benefits vests when the settlement for third-party benefits is executed. *See Eady v. State*, 279 So. 3d 1249, 1250 n.1 (Fla. 1st DCA 2019) (citing *Suarez v. Port Charlotte HMA, LLC*, 171 So. 3d 740 (Fla. 2d DCA 2015)). Because the settlement here was not reached until July 14, 2017, the Agency had no right to recovery until that time. *See Suarez*, 171 So. 3d at 742. Accordingly, the administrative law judge did not err by applying the 2017 version of the statute.

This Court previously determined in *Delgado v. Agency for Health Care Administration*, 237 So. 3d 432 (Fla. 1st DCA 2018) and *Al Batha* that a deceased Medicaid recipient's personal representative could qualify as a "recipient" under section 409.901(19), Florida Statutes, and could file a petition to challenge the Agency's lien. *Al Batha*, 263 So. 3d at 819. In 2017, however, the Legislature amended the statute concerning the process for Medicaid recipients to contest the amount of the Agency's Medicaid lien, to provide:

> *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 . . . .

§ 409.910(17)(b), Fla. Stat. (2017) (emphasis added).

While nothing in section 409.910(17)(b) expressly prohibits a deceased Medicaid recipient or her personal representative from challenging the amount payable to the Agency, the statute unambiguously states that a recipient may challenge the amount payable "[i]f federal law limits the agency to reimbursement from the recovered medical expense damages." Federal law did *not* limit the Agency to reimbursement in the present case.

Medicaid is a joint federal-state cooperative program, and participating states must comply with certain statutory requirements. *Eady*, 279 So. 3d at 1254–55 (citing *Giraldo v. Agency for Health Care Admin.*, 248 So. 3d 53 (Fla. 2018)). Among those requirements are the anti-lien provision (42 U.S.C. § 1396p(a)), the anti-recovery provision (42 U.S.C. § 1396p(b)), and the forced-assignment provisions (42 U.S.C. §1396k) of the Federal Medicaid Act. As detailed below, none of these limits the Agency's reimbursement for purposes of section 409.910(17)(b) when a Medicaid recipient is deceased.

The federal anti-lien provision states, "[n]o lien may be imposed against the property of any individual *prior to his death* on account of medical assistance paid or to be paid on his behalf under the State plan . . . ." 42 U.S.C. § 1396(p)(a)(1) (2017). Thus, by its express terms, the Medicaid Act's anti-lien provision applies only to living Medicaid recipients. *Estate of Hernandez v. Agency for Health Care Admin.*, 190 So. 3d 139, 143–46 (Fla. 3d DCA 2016) (citing *Austin v. Capital City Bank*, 353 P.3d 469 (Kan. Ct. App. 2015)).

Appellant argues the administrative law judge erred by reviewing only the anti-lien provision and not discussing the applicability of the federal anti-recovery and forced-assignment provisions. Although the final order did not discuss these provisions, we affirm because neither the federal anti-recovery provision nor the forced-assignment provision allows Appellant to contest the amount designated as recovered medical damages under section 409.910(17)(b), Florida Statutes. *See Robertson v.*

State, 829 So. 2d 901, 906 (Fla. 2002) (holding the "tipsy coachman" doctrine allows an appellate court to affirm a trial court that reaches the right result, but for the wrong reasons, so long as there is any basis which would support the judgment in the record). While the anti-recovery and forced-assignment provisions do not reference the death of the Medicaid recipient, neither of these provisions limit the Agency's recovery.

Unlike the anti-lien provision, which prohibits a state from seeking reimbursement from the non-medical expense portion of a recipient's recovery during that recipient's lifetime, the anti-recovery statute prohibits "adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan," except in certain circumstances not relevant here. 42 U.S.C. § 1396p(b); *Goheagan v. Perkins*, 197 So. 3d 112, 116 (Fla. 4th DCA 2016). However, the third-party liability provision (42 U.S.C. § 1396a(a)(25)) and the assignment provision (42 U.S.C. § 1396k(a)) are exceptions to the anti-lien and anti-recovery provision. *See Ahlborn*, 547 U.S. at 284; *see Tristani ex rel. Karnes v. Richman*, 652 F.3d 360, 374 (3d Cir. 2011) ("[T]he only way to harmonize the conflicting language of the anti-lien and anti-recovery provisions with the later-enacted reimbursement and forced assignment provisions is to conclude that *the anti-lien and anti-recovery provisions do not apply to medical costs recoverable from liable third parties*.") (emphasis added). Thus, the anti-recovery provision does not apply to limit the State's recovery of medical costs from liable third parties. *See Tristani*, 652 F.3d at 374.

Additionally, the forced-assignment provision does not apply. The federal forced-assignment provision mandates that a State require its Medicaid recipients—as a condition of receiving benefits—to assign their rights to any third-party payments for medical care. *See* 42 U.S.C. § 1396k(a) ("[A] State plan for medical assistance shall--(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual . . . , the individual is required--(A) to assign the State any rights . . . to payment for medical care from any third party;"). It operates to aid "in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan . . . ." 42 U.S.C. §1396k(a); *see Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627 (2013). The forced-assignment provision

also "ensure[s] that Medicaid beneficiaries [do] not receive a windfall by recovering medical costs they did not pay . . . ." *See Tristani*, 652 F.3dat 375. It does not apply here to limit the Agency's reimbursement.

Nothing in the federal anti-lien, anti-recovery, or forced-assignment provisions apply to limit the Agency's reimbursement or allow Appellant to challenge the amount of medical expenses allocated under the formula in the present case. To hold otherwise would contradict statutory provisions and clear legislative intent: "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." § 409.910(1), Fla. Stat. (2017).

AFFIRMED.

LEWIS and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Floyd B. Faglie of Staunton & Faglie, PL, Monticello, for Appellant.

Alexander R. Boler of Boler Legal, PLLC, Tallahassee, for Appellee.