STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JARED BRUNO RAMELLA,

Petitioner,

vs. Case No. 17-5454MTR

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

On November 14, 2017, Administrative Law Judge Hetal Desai of the Division of Administrative Hearings conducted the final hearing in this matter by video teleconference with sites in Tallahassee and Tampa, Florida.

APPEARANCES

For Petitioner: John W. Staunton, Esquire
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For Respondent: Alexander R. Boler, Esquire
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STATEMENT OF THE ISSUES

The issue for determination is the amount of money Petitioner, Jared Bruno Ramella, must pay to Respondent, Agency for Health Care Administration ("AHCA" or "the Agency"), out of his settlement proceeds as reimbursement for past Medicaid

expenditures pursuant to section 409.910, Florida Statutes (2017).[1/] More specifically, it must be determined whether Petitioner must pay the default amount of the Medicaid lien, $121,065, pursuant to section 409.910(11)(f); and, if not, what portion of his $775,000 settlement proceeds is due to AHCA.

PRELIMINARY STATEMENT

On September 29, 2017, Petitioner, a Medicaid recipient, filed a "Petition to Determine Amount Payable to Agency for Health Care Administration in Satisfaction of Medicaid Lien" ("Petition") with the Division of Administrative Hearings ("DOAH"). Upon receiving the Petition, DOAH notified the Agency of the Petition and assigned it to an Administrative Law Judge ("ALJ").

The Petition challenged the Agency's Medicaid lien on Petitioner's settlement and recovery from third parties. Pursuant to section 409.910(11)(f), the Agency seeks full reimbursement of Medicaid expenditures paid on Petitioner's behalf with Medicaid funds. The Petition asserts reimbursement of a lesser portion of Petitioner's recovery is appropriate pursuant to section 409.910(17)(b).

After proper notice, the ALJ held a telephonic pre-hearing conference on November 9, 2017, to determine the scope of the hearing and discuss the exhibits and witnesses. During this

conference, the parties' stipulation to a number of facts was discussed; these stipulated facts are incorporated below.

The final hearing was held on November 14, 2017. Petitioner offered the testimony of two witnesses: Weldon Earl Brennan, Esquire, Petitioner's personal injury attorney and an expert witness in valuation of personal injury damages; and Ralph Vinson Barrett, Esquire, who was also accepted as an expert in valuation of damages in personal injury cases. Moreover, Petitioner's Exhibits 1 through 22 were admitted into evidence without objection. The Agency did not offer any witnesses or evidence.

A Transcript of the proceeding was filed on December 19, 2017. The parties were granted an extension to file post-hearing submittals. Both parties filed proposed final orders ("PFO"), but Petitioner's submittal was untimely. As the Recommended Order had not been finalized and there was no objection to the late-filed PFO, both PFOs have been considered.

FINDINGS OF FACT

Underlying Accident and Injuries

1. Petitioner, at age 29, was involved in a catastrophic motorcycle accident leaving him paralyzed from his waist down, and with only limited use of his right arm. On the night of November 21, 2014, Petitioner's motorcycle collided with an oncoming vehicle that had turned left in front of Petitioner. The driver of the oncoming vehicle ("Driver") did not see

Petitioner riding toward her in traffic and Petitioner was unable to stop. Upon impact Petitioner was thrown off his motorcycle and landed approximately 64 feet away.

2. At the scene of the accident, Petitioner had no sensation from his mid-abdomen down. Later, it was determined he suffered a number of injuries including fractures of several of his cervical vertebrae, a broken right leg, severe nerve damage in his right arm, and a brain bleed.

3. Petitioner is permanently paralyzed from the ribs down, has no control over his bowel and urinary functions, and suffers from chronic depression and an anxiety disorder. The injuries have impacted not only his physical abilities, but have also affected his ability to maintain normal family, social and work relationships.

4. Petitioner received extensive medical care for his injuries. In total, as of September 2017, Petitioner's unpaid past medical expenses ("PME") related to his injuries totaled $159,818, of which $121,065 was provided by Medicaid.[2/] No portion of the PME was incurred for future medical care.

Petitioner's Sources of Recovery

5. As a result of the accident, Petitioner filed a claim for damages with his mother's insurance policy and received the policy limits, $150,000.

6. Petitioner filed a similar claim against the Driver's personal insurance policy and received the policy limits, $25,000.

7. Personally, the Driver had no collectable assets. She and her family business, however, maintained a number of insurance policies with Auto Owners Insurance Co. ("Auto Owners"), with a total coverage limit of $100,000. Petitioner made a claim against these policies, but Auto Owners declined to tender the policy limits to him.

8. In 2015, Petitioner filed a lawsuit against the Driver in circuit court. Ultimately, Auto Owners settled with Petitioner for $600,000. In exchange for the settlement funds, Petitioner agreed to dismiss the lawsuit, and execute a full release of the Driver for the accident and Auto Owners for a potential bad faith claim.

9. In total, Petitioner received $775,000 in gross settlement proceeds ("GSP") from the following sources:

25,000	USAA (Driver's personal policy)
150,000	Allstate (Petitioner's mother's policy)
100,000	Auto Owners (Driver's self-employment policy)
500,000	Auto Owners (bad faith settlement)
$775,000	Gross Settlement Proceeds

10. Mr. Brennan testified that even though the Driver would have been found liable had the matter gone to trial, the $100,000 policy limit was the best Petitioner could hope to recover even with a favorable jury verdict because the Driver was "judgment

proof." Based on Auto Owner's refusal to tender the policy limits, Petitioner was able to recover $500,000 in settlement proceeds above the policy limits.

11. Had Petitioner not pursued litigation, the most Petitioner would be able to recover would be $275,000.

12. On September 21, 2017, Petitioner notified AHCA of the Auto Owner's settlement and asked AHCA what amount it would accept in satisfaction of its $121,065 Medicaid lien. AHCA did not reply to Petitioner's inquiry.

13. Petitioner deposited $121,065 in an interest-bearing account for the benefit of AHCA pending an administrative determination of AHCA's rights by DOAH.

Allocation of Past Medical Expenditures

14. The parties stipulated that under the default formula found in section 409.910(11)(f), Petitioner is required to pay the Agency the full amount of the $121,065 Medicaid lien from the $775,000 total settlement proceeds.

15. The settlement agreement with Auto Owners contained a paragraph titled "Allocation of Settlement." This paragraph stated Petitioner's damages were valued as more than $12 million, and $7,973.71 of the $600,000 was allocated for past medical bills.

> Allocation of Settlement. Although it is acknowledged that this settlement does not fully compensate Plaintiff for all of the

> damages he has allegedly suffered, this settlement shall operate as a full and complete Release as to Releasees (as more fully described . . . below) without regard to this settlement only compensating Plaintiff for a fraction of the total monetary value of his alleged damages. The parties agree that Plaintiff's alleged damages have a value in excess of $12,000,000, of which $159,474.11[3/] represents Plaintiff's claim for past medical expenses. Given the facts, circumstances, and nature of Plaintiff's alleged injuries and this settlement, the parties have agreed to allocate $7,973.71 of this settlement to Plaintiff's claim for past medical expenses and allocate the remainder of the settlement towards the satisfaction of claims other than past medical expenses. This allocation is a reasonable and proportionate allocation based on the same ratio this settlement bears to the total monetary value of all Plaintiff's alleged damages.

The settlement agreement between Petitioner and Auto Owners was fully executed on September 22, 2017.

16. AHCA was not a party to the settlement agreement or release.

17. Although the parties stipulated to a number of facts and figures, they did not stipulate to the total provable damages ("TPD"). Regardless, Petitioner proved by the preponderance of the evidence that TPD was equivalent to $12 million.

18. More precisely, Petitioner established through unrebutted evidence and testimony of his trial attorney and his expert witness that personal injury actions can be broken down into the following categories:

(A) past lost wages;

(B) future lost income;

(C) past medical amounts billed;

(D) future medical expenses; and

(E) noneconomic damages such as pain and suffering.

This is consistent with terminology used in other administrative proceedings defining TPD as "all components of a plaintiff's recoverable damages, such as medical expenses, lost wages, and noneconomic damages (e.g., pain and suffering)." See Smathers v. Ag. for Health Care Admin., Case No. 16-3590MTR, 2017 Fla. Div. Adm. Hear. LEXIS 540, at *7 (Fla. DOAH Sept. 13, 2017).

19. According to the testimony, jury awards--which are one manifestation of a TPD determination--in similar personal injury cases can be estimated to be approximately 2.85 times the first four categories, or TPD = 2.85 x (A + B + C + D).

20. Petitioner proved that his past economic damages (A + C)--which include the total amount billed for medical services and lost income as of the date of the settlement--were approximately $1,058,159.[4/]

21. Petitioner also offered into evidence an economic report projecting future lost income assuming Petitioner's loss of total earning capacity; and a "future life care plan" report that projected future medical expenses. Together, these reports established Petitioner's future economic damages (B + D) would be

conservatively estimated at $3,576,376. The present day value of these future damages would be $3,892,550.

22. Based on these figures, Petitioner's TPD can be calculated to be approximately $12 million: TPD = ($1,058,159 + $3,892,550) x 2.85 = $12,151,926.

23. Mr. Brennan testified that based on his experience and the research he conducted in connection with filing Petitioner's lawsuit, he believed the total value of the lawsuit was in a range between $12 and $16 million.

24. Mr. Barrett testified that based on his familiarity with jury trials involving similar injuries, in his expert opinion, a jury verdict would have been between $12 and $18 million, noting "12 million is certainly a very conservative figure for his pure damages."

25. Both witnesses also testified the $775,000 settlement amount did not fully compensate Petitioner. There was no dispute at the hearing that the GSP is a fraction of the cost for future medical expenses, and does not begin to cover Petitioner's future loss of earning potential or his noneconomic damages.

26. The portion of Petitioner's GSP that can be allocated as PME paid by the Agency remains to be determined. Under a "settlement-to-value" formula, AHCA would recover the same portion of its lien as the portion of GSP in relation to his TPD,

or equal to GSP/TPD x (PME). See Smathers, 2017 Fla. Div. Adm. Hear. LEXIS 540, at *8.

27. Here, the GSP represented approximately 6.46 percent of the TPD. Applying this percentage to the PME using the "settlement-to-value" formula, the Agency could only recover $10,324. In other words, the amount of settlement funds attributable to medical expenditures can be determined as:

$$\frac{\$775,000 \text{ (GSP)}}{\$12,000,000 \text{ (TPD)}} \times \$159,818 \text{ (PME)}$$

28. In support of this formula, Petitioner submitted--again without an objection from AHCA--orders from various Florida circuit courts reducing Medicaid liens by applying this formula. Mr. Barrett's unrebutted testimony corroborated this evidence that the "settlement-to-value" formula should be applied to Petitioner's PME, noting this method was "logical, and that is how it is done. That's the trade practice."

29. Given that Petitioner's witnesses were the only witnesses, these witnesses were knowledgeable and credible, and there was no contrary testimony or evidence, Petitioner has proved by a preponderance of the evidence that $10,324 constitutes the portion of the GSP that can fairly be allocated toward Petitioner's PME.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the subject matter and parties in this case pursuant to sections 120.569, 120.57, and 409.910, Florida Statutes, the Medicaid Third-Party Liability Act. Delgado v. Ag. for Health Care Admin., 43 Fla. L. Weekly D245, 2018 Fla. App. LEXIS 1012, at *11-12 (Fla. 1st DCA Jan. 26, 2018) (concluding DOAH has subject matter jurisdiction to resolve disputes brought under section 409.910(17)(b); "In his final order, the ALJ initially concluded as a matter of law that DOAH had 'jurisdiction over the subject matter . . . pursuant to sections 120.569, 120.57(1) and 409.910(17), Florida Statutes.' The ALJ did not err in reaching that conclusion.").

31. Medicaid is a joint federal-state program designed to help participating states provide medical treatment for their residents that cannot afford to pay. Moore ex rel. Moore v. Reese, 637 F.3d 1220, 1232 (11th Cir. 2011). Although participation in Medicaid is voluntary, all states take advantage of this funding source for the medical needs of its citizens. See Ark. Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 275 (2006) ("States are not required to participate in Medicaid, but all of them do. The program is a cooperative one; the Federal Government pays between 50% and 83% of the costs the State incurs for patient care, and, in return, the State pays its

portion of the costs and complies with certain statutory requirements for making eligibility determinations, collecting and maintaining information, and administering the program."); see also Gallardo v. Dudek, 263 F. Supp. 3d 1247, 1250 (N.D. Fla. 2017), amended on rehearing, 2017 U.S. Dist. LEXIS 112448 (N.D. Fla. 2017); rev. granted, Case No. 17-13693 (11th Cir. 2017); and see also Estate of Hernandez v. Ag. for Health Care Admin., 190 So. 3d 139, 141-142 (Fla. 3d DCA 2016) (describing interplay between Federal and Florida law regarding Medicaid program and lien recovery).

32. In order for the state of Florida to take advantage of Medicaid funds for patient care costs, it must comply with the federal regulations requiring it to recover its expenditures for the medical expenses from third-party sources such as settlement agreements. 42 U.S.C. § 1396a(a)(25)(B); Ahlborn, 547 U.S. at 284-85. At the same time, the Medicaid statute limits a state's right to collect reimbursement of expended funds to only those third-party monies that can be allocated for medical care. 42 U.S.C. § 1396p(a)(1); Ahlborn, 547 U.S. at 285-86.

33. The parties have stipulated: (1) the Agency has the right to recover payment; (2) Petitioner has the opportunity to prove that the portion of the settlement that represents medical expenses is less than the amount due under the default formula; (3) the Agency can only seek recovery from that portion of the

settlement that represents PME; and (4) Petitioner's burden of proof is the "preponderance of the evidence" standard. What remains to be determined is whether Petitioner proved that less than $121,065 of the $775,000 represents the PME; and, if so, what portion of the $775,000 can be allocated for the PME.

34. The Legislature set forth a "default formula" to determine the amount the Agency may recover for past Medicaid payments from a judgment, award, or settlement from a third-party. Section 409.910(11)(f) establishes the Agency's default recovery amount for a Medicaid lien is limited to one-half of the total award, 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. Here, the parties stipulated that under this statutory formula, the Agency would be entitled to its full lien amount of $121,065.

35. The statute, however, provides Medicaid recipients with a method for challenging this default amount by initiating an administrative proceeding through DOAH. Section 409.910(17)(b) provides the procedure by which a Medicaid recipient may contest the amount designated as recovered medical expenses payable under section 409.910(11)(f). Due to recent federal and state court decisions striking down portions of section 409.910(17)(b), this section currently is interpreted as follows:

> 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 [a preponderance of the evidence] ~~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. (strikethrough and underline added).

See Gallardo, 263 F. Supp. 3d at 1260 (holding Florida's "clear and convincing" burden in section 409.910(17)(b) is preempted by federal law); Museguez v. Ag. for Health Care Admin., Case No. 16-7379MTR, 2017 Fla. Div. Adm. Hear. LEXIS 561, *36-37 (Fla. DOAH Sept. 19, 2017) (explaining the default burden of proof after Gallardo pursuant to section 120.57(1)(j) is preponderance of the evidence); Lamendola v. Ag. for Health Care Admin., Case No. 17-3908MTR, 2018 Fla. Div. Adm. Hear. LEXIS 6, *14-15 (Fla. DOAH Jan. 5, 2018) ("Notwithstanding the language of section 409.910(17)(b), because of rulings in Gallardo . . . Petitioner's burden in this case is a preponderance of the evidence."). See also Gallardo, 263 F. Supp. 3d at 1253 ("Gallardo contends that § 409.910 conflicts with federal law and is therefore preempted to the extent that it allows AHCA to satisfy its lien from a Medicaid recipient's recovery for future medical expenses. This Court agrees."); Willoughby v. Ag. for Health Care Admin., 212 So. 3d

516, 518 (Fla. 2d DCA 2017) (holding third-party proceeds representing future medical expenses cannot be attached for purposes of Medicaid lien), voluntarily dismissed Case No. SC17-660 (Fla. S. Ct. Sept. 13, 2017); Lamendola, 2018 Fla. Div. Adm. Hear. LEXIS 6, at *15) (noting "any settlement proceeds attributed to future medical expenses shall not be considered in calculation of AHCA's lien"). But see Giraldo v. Ag. for Health Care Admin., 208 So. 3d 244 (Fla. 1st DCA 2016) (conflicting with Willoughby, finding AHCA may recover proceeds allocated toward future medical expenses to satisfy Medicaid lien), rev. granted, Case No. SC17-297 (Fla. S. Ct. Sept. 6, 2017).

36. Here, the Agency has agreed to the burden of proof and that does not seek reimbursement from any portion of the settlement for future medical damages. It simply asserts that Petitioner has not met his burden to show "that a lesser portion of the total recovery should be allocated as reimbursement for past medical expenses."

37. Again, the burden was on Petitioner as the Medicaid recipient to prove by a preponderance of the evidence that a lesser portion of the total recovery should be allocated as reimbursement for PME than the amount the Agency calculated. The "preponderance of the evidence" standard is a lower bar than the "clear and convincing" standard formerly applied and currently stated in section 409.910(17)(b). It is defined as evidence that

more likely than not tends to prove a proposition. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000). Citing Black's Law Dictionary, the Florida Supreme Court defines "preponderance of the evidence" as follows:

> The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872 n.1 (Fla. 2014).

38. Although it is true the statute provides little guidance as to what standard should be used in determining whether and to what extent a Medicaid recipient can satisfy the "should be allocated" requirement, here Petitioner has proven that to allow the Agency to recover the entire default amount would not be fair or reasonable. See Smathers 2017 Fla. Div. Adm. Hear LEXIS 540, at *16 n.7.

39. It should be noted that Petitioner's settlement agreement in and of itself cannot establish the allocation to be used in determining what portion of the settlement proceeds can be allocated for PME. Section 409.910(13) provides that a settlement agreement cannot impair a Medicaid lien:

> No action of the recipient shall prejudice the rights of the agency under this section. No . . . "settlement agreement," entered into or consented to by the recipient or his or her legal representative shall impair the agency's rights.

See also Deyamparet v. Ag. for Health Care Admin., Case No. 17-4560MTR, 2018 Fla. Div. Adm. Hear. LEXIS 2, *16-17 (Fla. DOAH Jan. 3, 2018). Here, the numbers in the settlement agreement are not correct, nor were they agreed to by AHCA.

40. Regardless of the explicit language in the settlement agreement, all of the testimony and other evidence offered by Petitioner proved that the "settlement-to-value" formula was an appropriate method to determine what portion of the allocation was attributable to PME.

41. Petitioner also asserts that the $10,324 amount that results from using the "settlement-to-value" formula should be further reduced to reflect the percentage that the Medicaid expenditure ($121,065) makes up the total PME ($159,818), which is approximately 76 percent. This formula would make only $7,846 available to AHCA for satisfaction of the Medicaid lien. There is no authority for such a reduction. Section 409.910(17)(b) explicitly allows only one method for a Medicaid recipient to challenge the default amount: by establishing "that a lesser portion of the total recovery should be allocated as reimbursement

for past [] medical expenses." The statute does not use the term "past Medicaid expenditures."

42. Although the Agency did not have the burden of proof, it could have put on testimony or evidence that brought into question Petitioner's underlying propositions relating to the TPD, or that another method should be used to calculate what portion of the proceeds are attributable to PME and should be available to AHCA. It chose not to do so. There was nothing in the record contradicting the testimony and evidence put on by Petitioner that a "settlement-to-value" ratio of GSP to PME constitutes a fair, reasonable and accurate share of the total settlement available for recovery on the Medicaid lien.

43. Petitioner proved by a preponderance of the evidence, $10,324 represents the amount of the GSP that can be fairly attributable to PME and are available to the Agency for repayment on its Medicaid lien.

ORDER

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

ORDERED that the Agency for Health Care Administration may recover $10,324 from Petitioner's settlement proceeds at issue in this matter in satisfaction of its Medicaid lien.

DONE AND ORDERED this 15th day of February, 2018, in Tallahassee, Leon County, Florida.

HETAL DESAI
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of February, 2018.

ENDNOTES

[1/] Unless referenced otherwise, all citations to state and federal statutes, rules and regulations are to the 2017 versions which were effect at the time of Petitioner's settlement agreement. See Cabrera v. Ag. for Health Care Admin., Case No. 17-4557MTR, 2018 Fla. Div. Adm. 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/] Although the evidence establishes the total medical costs from the date of the accident to the time of the expert report were approximately $1 million (see supra, n.4), the parties stipulated for Medicaid lien purposes the "past medical expenses" amount is $159,818 based on the outstanding lien amounts, which are broken down as follows:

	Lien Amount	Source
	$121,065	Medicaid
	15,618	Florida Brain and Spinal Cord Injury Program
	20,120	Prestige Health
	2,610	AETNA Medicare Prescription Drug Program
+	405	Medicare
	$159,818	PME

All monetary figures are rounded to the nearest dollar.

[3/] The discrepancy between the PME ($159,818) and the amount in the Settlement Agreement ($159,474) was due to a subsequent billing adjustment.

[4/] Although this figure seems excessive for these components, AHCA did not dispute the amounts provided by Petitioner for either the past lost wages or total past medical expenses which include both the PME and other expenses not subject to liens. According to the economic report these figures were as follows:

	$83,327	Loss of Income/ Earning Capacity
+	974,832	Total Billing for medical expenses as of Sept. 2016
	$1,058,159	Past Economic Damages as of September 2016

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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.