STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JENNIFER PUZANSKAS,

Petitioner,

vs. Case No. 18-2361MTR

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

Administrative Law Judge D. R. Alexander conducted a hearing in this matter on September 13, 2018, by video teleconference at sites in St. Petersburg and Tallahassee, Florida.

APPEARANCES

For Petitioner: Floyd B. Faglie, Esquire
Staunton & Faglie, P.L.
189 East Walnut Street
Monticello, Florida 32344-1946

For Respondent: Alexander R. Boler, Esquire
Suite 300
2073 Summit Lake Drive
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STATEMENT OF THE ISSUE

The issue to be decided is the amount to be paid by Petitioner to Respondent, Agency for Health Care Administration (Agency), out of her settlement proceeds as reimbursement for

past Medicaid expenditures pursuant to section 409.910, Florida Statutes (2018).

## PRELIMINARY STATEMENT

On May 10, 2018, Petitioner, a Medicaid recipient, filed with the Division of Administrative Hearings her Petition to Determine Amount Payable to Agency for Health Care Administration in Satisfaction of Medicaid Lien (Petition) seeking a determination that the Agency is entitled only to $8,992.50 for reimbursement of $54,171.70 in Medicaid expenses incurred by the Agency.

At the hearing, Petitioner presented the testimony of two witnesses. Petitioner's Exhibits 1 through 9 were accepted in evidence. Respondent did not offer any witnesses or exhibits.

A one-volume Transcript of the hearing has been prepared. The parties timely filed proposed final orders on November 7, 2018, which have been considered.

## FINDINGS OF FACT

1. On April 21, 2011, Ms. Puzanskas gave birth to her son. After birth, Ms. Puzanskas began experiencing symptoms of nervousness, panic attacks, and being overwhelmed. On June 21, 2011, she called her doctor's office and described her symptoms to her midwife. Her midwife concluded that Ms. Puzanskas was depressed or experiencing "baby blues." Based on this telephonic diagnosis, the midwife arranged for a prescription of

the anti-depressant psychotropic drug, Zoloft, to be called into Ms. Puzanskas' pharmacy.

2. The next day after taking the Zoloft, Ms. Puzanskas again called her doctor's office with complaints that the Zoloft was causing her to feel strange and jittery. Ms. Puzanskas was instructed to continue taking the medication.

3. On June 24, 2011, Ms. Puzanskas began suffering from severe depression and hallucinations. That same day, she went into her back yard and doused herself with gasoline and set herself on fire. She suffered third-degree full thickness burns over 30 percent of her body requiring multiple skin grafts, with scarring over 60 percent of her body from all burns and grafts.

4. Ms. Puzanskas' medical care for the injuries was paid by Medicaid, which provided $54,171.70 in benefits associated with her injuries. This amount constituted her entire claim for past medical expenses. As a condition of her eligibility for Medicaid, Ms. Puzanskas assigned to the Agency her right to recover from liable third-party medical expenses paid by Medicaid.

5. Ms. Puzanskas brought a medical malpractice action against the medical staff responsible for her care to recover all of her damages associated with her injuries.

6. During the pendency of the lawsuit, the Agency was notified of the action. Although it did not dispute the

ultimate settlement received by Petitioner or otherwise participate in any aspect of the litigation, the Agency asserted a $54,171.70 Medicaid lien against Ms. Puzanskas' cause of action and settlement of the action.

7. In preparation for the trial, Petitioner's counsel used mock jury panels to evaluate their trial strategies, value of damages, and the likelihood of a defense verdict.

8. Mock jurors split. Some would have returned a verdict for the defense, finding no liability, while others would have returned a verdict for Ms. Puzanskas and given her some limited damages. Still others would have given her a very high amount of damages. See Pet'r Ex. 9.

9. Eleven mock jurors provided verdicts from approximately $16,554,000 down to approximately $554,000. The remaining six jurors would have returned zero-dollar verdicts. The average award in the 17 verdicts was $3,741,000.

10. Nine of the 11 jurors who produced a verdict for Petitioner included approximately $54,000 in their verdict, and then added amounts ranging from $500,000 to $16,500,000. The $54,000 is representative of Petitioner's rounded hospital bills.

11. The insurance policy covering the incident had limits of $250,000 and the medical providers had no collectable assets. After the first day of trial, the medical providers offered

$500,000 to settle the case, and this was accepted. However, this amount did not fully compensate Petitioner for her injuries.

12. Mr. Moore, an experienced trial attorney who represented Petitioner, testified that based on his training and experience, Petitioner's damages had a value in excess of $3,700,000. However, using a conservative number for purposes of this case, he valued her damages at $3,000,000. Thus, the $500,000 settlement represented a recovery of 16.6 percent of the value of her damages, and a similar percentage for past medical expenses. Therefore, he testified that an allocation of $8,992.50, or 16.6 percent of $54,171.70, would be a reasonable and conservative portion of the settlement for past medical expenses.

13. Based on his training and experience and review of the medical records and file, Mr. Barrett, a trial attorney, valued Petitioner's damages between three and five million dollars. He also opined that $3,000,000 would be a very conservative figure. Using the same allocation method advocated by trial counsel, Mr. Barrett applied a 16.6 percent ratio to the Medicaid expenses, and concluded that an allocation of $8,992.50 of the settlement to past medical expenses is reasonable, rational, and appropriate.

14. This testimony was not rebutted by the Agency, and the Agency did not present any evidence proposing a differing valuation of damages or contest the methodology used to calculate the $8,992.50 allocation to past medical expenses.

15. The testimony from Mr. Moore and Mr. Barrett is compelling and persuasive. Accordingly, the undersigned finds that Petitioner has proven by a preponderance of the evidence that $8,992.50 of the settlement represents reimbursement for past medical expenses.

## CONCLUSIONS OF LAW

16. The Agency is the state agency authorized to administer Florida's Medicaid program. § 409.902, Fla. Stat.

17. As a condition for receipt of federal Medicaid funds, states are required to seek reimbursement for medical expenses from Medicaid recipients who later recover from legally liable third parties.

18. By accepting Medicaid benefits, Medicaid recipients automatically subrogate their rights to any third-party benefits for the full amount of Medicaid assistance provided by Medicaid and automatically assign to the Agency the right, title, and interest to those benefits, other than those excluded by federal law. Section 409.910(6)(c) creates an automatic lien on any such judgment or settlement with a third party for the full amount of medical expenses paid to the Medicaid recipient.

However, the Agency's recovery is limited to those proceeds allocable to past medical expenses.

19. Section 409.910(11)(f) establishes the amount of the Agency's recovery for a Medicaid lien to the lesser of its full lien; or 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. In this case, the parties agree the formula produces a lien of $54,171.70.

20. However, section 409.910(17)(f) provides a method (default allocation) by which a Medicaid recipient may contest the amount designated as recovered Medicaid expenses payable under section 409.910(11)(f). In order to successfully challenge the amount payable to the Agency, the recipient must prove, 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 by the Agency pursuant to the formula. Gallardo v. Dudek, 263 F. Supp. 3d 1247 (N.D. Fla. 2017).

21. In the instant case, Petitioner proved by a preponderance of the evidence that the settlement proceeds of $500,000 represent 16.6 percent of Petitioner's claim valued conservatively at $3,000,000. Therefore, it is concluded that the Agency's full Medicaid lien amount should be reduced by the

percentage that Petitioner's recovery represents of the total value of Petitioner's claim. Applying this 16.6 percent ratio to the Agency's Medicaid lien of $54,171.70 results in $8,992.50. This amount represents that share of the settlement proceeds fairly and proportionately attributable to expenditures that were actually paid by the Agency for Petitioner's past medical expenses.

## ORDER

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

ORDERED that the Agency for Health Care Administration is entitled to $8,992.50 from Petitioner's settlement proceeds in satisfaction of its Medicaid lien.

DONE AND ORDERED this 28th day of November, 2018, 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 28th day of November, 2018.

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.