

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AMANDA L. BAKER, BY AND THROUGH  
HER PARENTS AND GUARDIANS,  
JEFFREY BAKER AND KAREN BAKER,

Petitioner,

vs.

Case No. 18-3847MTR

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

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FINAL ORDER

Administrative Law Judge D. R. Alexander conducted a hearing in this matter on February 25, 2019, by video teleconference at sites in Lakeland 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  
Tallahassee, Florida 32317-7949

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.

PRELIMINARY STATEMENT

On July 20, 2018, Petitioner, Amanda L. Baker, a Medicaid recipient, by and through her parents and guardians, Jeffrey and Karen Baker, 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 to only \$9,453.15 for reimbursement of \$162,146.65 in Medicaid expenses incurred by the Agency.

At the hearing, Petitioner presented the testimony of two witnesses. Petitioner's Exhibits 1 through 12 were accepted in evidence. Respondent did not offer any witnesses but its Exhibit A has been accepted in evidence.

A one-volume Transcript of the hearing has been prepared. The parties filed proposed final orders on April 26, 2019, which have been considered.

FINDINGS OF FACT

1. On August 11, 2014, Amanda Baker, then 15 years old, was transferred from a medical center to a specialty pediatric hospital where she presented with complaints and symptoms of back pain, weakness, and paresthesia in her lower extremities. Over the next few days, she underwent examinations and assessments,

but no steps were taken to prevent her development of blood clots/embolisms due to her immobility nor were signs and symptoms of her development of blood clots/embolisms recognized.

2. On August 13, 2014, Amanda suffered two cardiac arrests due to blood clots/embolisms traveling to her heart and lungs. She was resuscitated, but due to a lack of oxygen to her brain, Amanda suffered a catastrophic hypoxic brain injury. She is now in a persistent vegetative state.

3. The Agency provided \$162,146.65 in Medicaid benefits associated with Amanda's injuries, all of which represent expenditures paid for her past medical expenses.

4. Amanda's parents brought a medical malpractice action against the medical providers responsible for her care to recover all of the damages associated with her injuries, as well as their individual damages associated with their daughter's injuries.

5. Seven defendants maintained insurance policies with a policy limit of \$250,000. The medical malpractice action was settled for each of the insurance policy limits, resulting in a lump sum unallocated settlement of \$1,750,000. This settlement was approved by the court.

6. During the pendency of the malpractice action, the Agency was notified of the action. It asserted a \$162,146.65 Medicaid lien against the Bakers' cause of action and settlement of that action. However, it did not institute, intervene in, or

join in the action to enforce its rights, as provided in section 409.910(11), or participate in any aspect of the litigation.

7. Application of the formula in section 409.910(11)(f) to Amanda's \$1,750,000 settlement requires full payment of the Medicaid lien.

8. Petitioner presented the testimony of Daniel Moody, Esquire, a Lakeland attorney with 30 years' experience in personal injury law, including medical malpractice. He represented Amanda and her family in the medical malpractice action. As a routine part of his practice, he makes assessments concerning the value of damages suffered by injured clients. He also stays abreast of jury verdicts in his area by reviewing jury verdict reporters and discussing cases with other trial attorneys. He has been accepted as an expert in valuation of damages.

9. Based on his training and experience, Mr. Moody opined that the damages recoverable in Amanda's case had a conservative value of \$30 million.

10. Petitioner also presented the testimony of R. Vinson Barrett, Esquire, a Tallahassee trial attorney with more than 40 years' experience. His practice is dedicated to plaintiff's personal injury, as well as medical malpractice, medical products liability, and pharmaceutical products

liability. He routinely makes assessments concerning the value of damages suffered by injured parties. He was accepted as an expert in the valuation of damages.

11. Based on his training and experience, Mr. Barrett opined that Amanda's damages are "worth at a bare minimum - and we're talking very conservatively here -- \$30,000,000."

12. Both experts testified that using \$30,000,000 as the value of all damages, Amanda only recovered 5.83 percent of the value of her damages. Accordingly, they opined that it would be reasonable, rational, and conservative to allocate 5.83 percent of the settlement, or \$9,453.15, to past medical expenses paid by the Agency through the Medicaid program.

13. The Agency did not call any witnesses, present any evidence as to the value of damages, propose a different valuation of the damages, or contest the methodology used to calculate the allocation to past medical expenses. In short, Petitioner's evidence was un rebutted.

14. The testimony from Mr. Moody and Mr. Barrett is compelling and persuasive. Accordingly, the undersigned finds that Petitioner has proven by a preponderance of the evidence that \$9,453.15 of the settlement represents reimbursement for past medical expenses.

CONCLUSIONS OF LAW

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

16. 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.

17. 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.

18. 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 results in the Agency recovering the full amount of the lien.

19. 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).

20. Where uncontradicted testimony is presented by the recipient, there must be a "reasonable basis in the record" to reject it. Giraldo v. Ag. for Health Care Admin., 248 So. 3d 53 (Fla. 2018). Here, there is no reasonable basis to reject that testimony.

21. In the instant case, Petitioner proved by a preponderance of the evidence that the settlement proceeds of \$1,750,000 represent only 5.83 percent of Petitioner's claim valued conservatively at \$30,000,000. 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. The application of the 5.83 percent

ratio to the Agency's Medicaid lien of \$162,146.65 results in \$9,453.15. 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 \$9,453.15 from Petitioner's settlement proceeds in satisfaction of its Medicaid lien.

DONE AND ORDERED this 21st day of May, 2019, in Tallahassee, Leon County, Florida.



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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 21st day of May, 2019.



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.