STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELISHA LOEBELL, DECEASED, BY AND THROUGH SYLVIA LOEBELL AS ADMINISTRATOR OF THE ESTATE OF ELISHA LOEBELL,

Petitioner,

vs. Case No. 19-3852MTR

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

On October 17, 2019, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division) conducted a duly-noticed hearing in Tallahassee, 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 for the undersigned to determine is the amount payable to Respondent, Agency for Health Care Administration

(AHCA), as reimbursement for medical expenses paid on behalf of Petitioner Elisha Loebell, deceased, by and through Sylvia Loebell, as administrator of the estate of Elisha Loebell (Petitioner), pursuant to section 409.910, Florida Statutes (2018), from settlement proceeds Petitioner received from a third party.

PRELIMINARY STATEMENT

On July 18, 2019, Petitioner filed a Petition to Determine Amount Payable to Agency for Health Care Administration in Satisfaction of Medicaid Lien (Petition). The Petition challenged AHCA's placement of a Medicaid lien in the amount of $372,654.33 on Petitioner's $1,000,000.00 settlement proceeds from a third party.

Prior to the final hearing, the parties filed a Joint Pre-hearing Stipulation that contained a statement of admitted and stipulated facts for which no further proof would be necessary. The undersigned has incorporated those stipulated facts into the Findings of Fact below, to the extent necessary.

The final hearing commenced as scheduled on October 17, 2019. At the final hearing, Petitioner presented the testimony of two expert witnesses: Charles Zauzig, Esquire, and R. Vinson Barrett, Esquire. The undersigned accepted Petitioner's Exhibits P1 through P9, without objection. Additionally, at Petitioner's unopposed request, the undersigned took official recognition of

the following two final orders that the Division issued: Hunt v. Ag. for Health Care Admin., Case No. 13-4684MTR (Fla. DOAH Sept. 10, 2015); and Delgado v. Ag. for Health Care Admin., Case No. 16-2084MTR (Fla. DOAH Nov. 30, 2016). See Fla. Admin. Code R. 28-106.213(6). AHCA did not call any witnesses and did not offer any exhibits at the final hearing.

The Transcript of the final hearing was filed with the Division on November 15, 2019. Both parties timely filed proposed final orders, which the undersigned has considered in the preparation of this Final Order.

All references are to the 2018 codification of the Florida Statutes, unless otherwise indicated.

FINDINGS OF FACT

1. AHCA is the state agency charged with administering the Florida Medicaid program, pursuant to chapter 409.

2. On March 12, 2012, Sylvia Loebell (Sylvia), who was 37 weeks pregnant with Elisha Loebell (Elisha), was traveling with her husband through Virginia. Sylvia began experiencing severe back, left flank, and abdominal pain and presented to the emergency room. She was transferred to a hospital where she was given morphine, antibiotics for a suspended kidney infection, and anti-nausea medicine. On or about March 15, 2012, delivery was induced. During the early morning hours of March 16, 2012, extreme difficulty was experienced in the delivery and a vacuum

was applied to Elisha's head. During this time, Sylvia requested delivery via C-section, but the request was ignored. Further, during the delivery process, the medical staff failed to monitor or recognize extreme fetal distress. Eventually, at 5:07 a.m., Elisha was delivered. Elisha's head was severely bruised, swollen, bleeding, and blistered. She was not breathing and required resuscitation. Elisha was taken to the Neonatal Intensive Care Unit (NICU), but the pediatrician on duty did not arrive in the NICU until over four hours after Elisha was born, and a neonatologist was not consulted until 24 hours after birth.

3. Elisha was diagnosed with catastrophic brain damage due to a lack of oxygen to the brain during and after birth. Due to this catastrophic brain damage, Elisha suffered from quadriplegic cerebral palsy, seizures, global development delay, bilateral cervical blindness, temperature instability, and microcephaly. Elisha was G-tube dependent and required a tracheostomy. After three years of suffering from her extensive birth injuries, Elisha died on April 2, 2015.

4. Elisha was survived by her mother, Sylvia, and her father, Matthew Loebell, who are married and who reside in Florida.

5. Elisha's medical care related to her injury was paid by Medicaid, and AHCA through the Medicaid program provided $372,654.53 in benefits associated with her injury. This

$372,654.54 represents the entire claim for past medical expenses.

6. The costs associated with Elisha's funeral totaled $3,000.00, which her surviving parents paid.

7. Sylvia was appointed the administrator of the estate of Elisha.

8. Petitioner filed a lawsuit for medical malpractice and wrongful death in Virginia to recover both the individual damages of Elisha's surviving parents and the individual damages of Petitioner against the medical providers and staff who were responsible for Elisha's care at the time of her birth (Virginia Defendants).

9. During the pendency of Petitioner's lawsuit against the Virginia Defendants, Petitioner notified AHCA of the lawsuit, and AHCA asserted a Medicaid lien of $372,654.53 against Petitioner's lawsuit and settlement of that action.

10. Petitioner settled the lawsuit for medical malpractice and wrongful death with the Virginia Defendants for $1,000,000.00. Those parties executed a Settlement Agreement and Full and Final Release (Release), which stated, in part:

> Although it is acknowledged that this settlement does not fully compensate Elisha Loebell for all of the damages she has allegedly suffered, this settlement shall operate as a full and complete Release as to Releases without regard to this settlement only compensating Elisha Loebell for a

> fraction of the total monetary value of her alleged damages. The parties agree that Elisha Loebell's alleged damages have a value in excess of $6,372,654.53, of which $372,654.54 represents Elisha Loebell's claim for past medical expenses. Given the facts, circumstances, and nature of Elisha Loebell's injuries and this settlement, the parties have agreed to allocate $58,506.76 of this settlement to Elisha Loebell'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 claimed total monetary value of all [of] Elisha Loebell's alleged damages.

11. AHCA did not commence a civil action to enforce its rights under section 409.910 or intervene in Petitioner's lawsuit against the Virginia Defendants.

12. AHCA has not sought to set aside, void, or otherwise dispute the settlement of Petitioner's lawsuit.

13. Application of the formula set forth in section 409.910(11)(f) to Petitioner's $1,000,000.00 settlement authorizes payment to AHCA of $331,682.12.

Expert Witness Testimony

Testimony of Charles J. Zauzig, III

14. Petitioner presented the testimony of Charles J. Zauzig, III, the lead trial attorney who litigated Petitioner's lawsuit against the Virginia Defendants. Mr. Zauzig is a partner with the law firm of Nichols Zauzig in Woodbridge, Virginia.

Mr. Zauzig has been a trial attorney for 40 years and focuses his practice on representing parties in medical malpractice cases involving catastrophic injuries and death.

15. Mr. Zauzig tries, on average, three to four jury trials, per year, that result in a verdict. He testified that he is familiar with meeting with injured clients, reviewing medical records, reviewing expert reports, interviewing and deposing fact witnesses, and preparing cases for trial. He further testified that he regularly reviews jury verdict reports in Virginia, and discusses cases, including valuation and jury verdicts, with other attorneys. Mr. Zauzig testified that as a routine part of his practice, he assesses the value of damages that injured clients have suffered.

16. Mr. Zauzig is a member of several trial attorney associations, including the Virginia Trial Lawyers Association, American College of Trial Lawyers, American Association of Justice, Southern Trial Lawyers Association, American Board of Trial Advocacy, and the International Academy of Trial Lawyers. Mr. Zauzig served on the American Association of Justice's Board of Governors and chaired its Medical Negligence Group.

17. Petitioners moved, and the undersigned accepted, Mr. Zauzig as an expert in the valuation of damages. AHCA did not oppose Mr. Zauzig's designation as an expert.

18. As part of his representation of Petitioner in the lawsuit against the Virginia Defendants, Mr. Zauzig met with Elisha's parents, reviewed Elisha's medical records, and met with fact and expert witnesses concerning her care. Mr. Zauzig explained that during birth, Elisha suffered catastrophic brain damage as a result of being forced into her mother's pelvis repeatedly during contractions, which were induced through administration of drugs. He further explained that Elisha suffered catastrophic brain damage that resulted in Elisha having severe cerebral palsy, with additional issues such as blindness, respiratory failure, inability to regulate her body temperature, seizures, and difficulties with feeding that required the use of a G-tube. Because of this catastrophic brain damage and resulting issues, Elisha required constant care, much of which her parents provided.

19. Mr. Zauzig testified that after three years, Elisha passed away as a result of her birth injuries. Mr. Zauzig stated that Elisha's parents suffered deeply during Elisha's life and as a result of her death.

20. Mr. Zauzig testified that under the Virginia Wrongful Death Act, damages may include the parents' mental pain and suffering from the date of injury through death of their child, as well as sorrow thereafter, and medical expenses. See Va. Code Ann. §§ 8.01-50 through 8.01-95 (2018). He testified that based

on his professional training and experience, including a review of comparable Virginia jury verdicts, the damages suffered in the Petitioner's lawsuit against the Virginia Defendants had a value in excess of $6,372,654.53. Mr. Zauzig noted that one of his first medical malpractice trials involving a brain injury at birth resulted in a $6,000,000.00 verdict, in which each parent received a $3,000,000.00 verdict. Mr. Zauzig also testified that in 2002, a jury returned a verdict of $6,000,000.00 to the surviving parents of an infant wrongful death in a comparable venue in Virginia. Mr. Zauzig stated that these comparable verdicts supported his valuation of Petitioner's damages being in excess of $6,000,000.00.

21. Mr. Zauzig testified that Petitioner could also recover, under the Virginia Wrongful Death Act, Elisha's past medical expenses, which totaled $372,654.53. Thus, he concluded that it would be reasonable to value the combined damages at $6,372,654.53.

22. Mr. Zauzig admitted that the theory of liability and causation in the Petitioner's lawsuit—that the medical professionals should have stopped the drugs given to induce delivery when they determined the baby was in distress and should have instead performed a caesarian section—was novel and controversial. He testified that many experts disagree over whether this theory of liability was the cause of the injuries

Elisha suffered. Mr. Zauzig believed that the Virginia Defendants would vigorously defend this case on the issues of causation and standard of care, and that he expected that they would attack these issues in pre-trial motions.

23. Mr. Zauzig testified that based on these concerns, the parties settled this lawsuit for $1,000,000.00. He further testified that this settlement did not fully compensate Elisha's parents and Petitioner for the full value of damages. He testified that based on a valuation of all damages of $6,372,654.53, the $1,000,000.00 settlement represented a recovery of 15.7 percent of the value of the damages recovered in the $1,000,000.00 settlement. According to Mr. Zauzig, as Elisha's parents and Petitioner only recovered 15.7 percent of the value of the damages, it would be reasonable to allocate 15.7 percent of the claim for past medical expenses ($372,654.53), or $58,506.76.

24. Mr. Zauzig noted that in the Release, the Virginia Defendants agreed that the damages had a value in excess of $6,372,654.53, of which $372,654.53 represented the claim for past medical expenses. He further noted that the parties to the Release agreed to allocate $58,506.76 of the settlement to past medical expenses, which he further testified was reasonable.

Testimony of R. Vinson Barrett

25. Petitioner also presented the testimony of Mr. Barrett, a trial attorney with over 40 years of experience, who is a partner with the law firm of Barrett, Nonni and Homola, P.A., in Tallahassee. Mr. Barrett dedicates his legal practice to representing plaintiffs in personal injury and wrongful death lawsuits. Mr. Barrett has conducted numerous jury trials and has represented clients with catastrophic brain injuries.

26. Mr. Barrett testified that he routinely reviews jury verdict reports and makes assessments concerning the value of damages that injured parties have suffered. He also explained the process for making these assessments. He further testified that he is familiar with settlement allocation in the context of health insurance liens, Medicare set-asides, and workers' compensation liens.

27. The Division and other courts have accepted Mr. Barrett as an expert in the evaluation and valuation of damages. Petitioners moved, and the undersigned accepted, Mr. Barrett as an expert in the valuation of damages. AHCA did not oppose Mr. Barrett's designation as an expert.

28. Mr. Barrett testified that he was familiar with Elisha's injuries and Petitioner's lawsuit for medical malpractice and wrongful death against the Virginia Defendants. He detailed the cause of her injury, the level of round-the-clock

care Elisha required for her short life, and the impact and trauma her parents suffered as a result of her injuries and death.

29. Mr. Barrett opined, based on his review of Virginia and Florida jury verdicts, that a conservative estimate of the overall value of the damages would be $3,000,000.00 per parent, along with the past medical expenses of $372,654.53, for a total valuation of $6,372,654.53.

30. Mr. Barrett testified that Petitioner and the Virginia Defendants settled the lawsuit for $1,000,000.00, which did not fully compensate Elisha's parents. Mr. Barrett opined that using his conservative valuation of $6,372,654.53, the $1,000,000.00 settlement represented a 15.7 percent recovery of the value of the damages. Mr. Barrett further testified that because the settlement represented 15.7 percent of the damages, an allocation of 15.7 percent of the claim for past medical expenses, or $58,506.76, was reasonable and appropriate.

Ultimate Findings of Fact

31. The undersigned finds that the testimony of Mr. Zauzig and Mr. Barrett was credible and persuasive as to the total damages incurred by Petitioner. Mr. Zauzig's extensive experience in litigating catastrophic injuries and death, and medical malpractice actions, along with his experience as the lead trial counsel in Petitioner's lawsuit against the Virginia

Defendants, made him a compelling witness regarding the valuation of damages that Petitioner suffered, and the allocation of damages. Mr. Barrett's vast experience as a trial lawyer, who has previously testified numerous times before the Division and other courts regarding valuation and allocation of damages, similarly made him a credible witness regarding the valuation and allocation of damages in Petitioner's lawsuit against the Virginia Defendants.

32. AHCA's attorney cross-examined Mr. Zauzig and Mr. Barrett on some of the underpinnings of how each reached their opinions, but ultimately offered no evidence to counter these expert opinions regarding Petitioner's total damages or the past medical expenses recovered.

33. Accordingly, the undersigned finds that the preponderance of the evidence establishes that the total value of Petitioner's medical malpractice and wrongful death claim is $6,372,654.53, and that the $1,000,000.00 settlement resulted in Petitioner recovering 15.7 percent of Elisha's past medical expenses. In addition, the preponderance of the evidence establishes that $58,506.76 amounts to a fair and reasonable determination of the past medical expenses actually recovered by Petitioners and payable to AHCA.

CONCLUSIONS OF LAW

34. The Division has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.57(1) and 409.910(17), Florida Statutes.

35. AHCA is the agency authorized to administer Florida's Medicaid program. § 409.902, Fla. Stat.

36. Petitioner, as administrator of the Medicaid recipient's estate, is the proper party to bring this administrative proceeding. See Al Batha v. Ag. for Health Care Admin., 263 So. 3d 817, 819 (Fla. 1st DCA 2019); Delgado v. Ag. for Health Care Admin., 237 So. 3d 432, 2018 Fla. App. LEXIS 1012, at *13-14 (Fla. 1st DCA Jan. 26, 2018).

37. The burden of proof to challenge a statutory lien has been questioned in a recent federal court decision. See Gallardo v. Dudek, 263 F. Supp. 3d 1247 (N.D. Fla. 2017). The Gallardo court held that the provision of section 409.910 that places a clear and convincing burden of proof on the Medicaid recipient to provide "that the portion of the total recovery which should be allocated as past . . . medical expenses is less than the amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f)[,]" was preempted by the federal Medicaid law's anti-lien and anti-recovery provisions. See Id. at 1259-60. The Gallardo court enjoined AHCA from requiring this clear and convincing burden of proof. Section 120.57(1)(j) contains a

default provision regarding the burden of proof and states that "findings of fact shall be based on a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute." A preponderance of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not tends to prove a certain proposition." S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC, 139 So. 3d 869, 871 (Fla. 2014). Accordingly, the undersigned has applied the preponderance of the evidence burden of proof in this proceeding.[1/]

38. Medicaid is a cooperative federal-state medical assistance program. See 42 U.S.C. § 1396, et. seq. Florida has elected to participate in this program, and thus must comply with federal Medicaid statutes and regulations. See Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498 (1990); Public Health Trust of Dade Co. v. Dade Co. Sch. Bd., 693 So. 2d 562, 564 (Fla. 3d DCA 1997).

39. The federal Medicaid program requires every participating state to implement a third-party liability provision that authorizes a state to seek reimbursement for Medicaid expenditures from third parties when those resources become available. See 42 U.S.C. § 1396a(a)(25); § 409.910(4), Fla. Stat. To accomplish this, section 409.910(6) establishes that AHCA is automatically assigned any rights a Medicaid

recipient has to third-party benefits. Section 409.910(1) states, in part:

> It is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical care are primary to medical assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, 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 paid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid.

40. In addition, section 409.910(7) authorizes AHCA to recover payments paid from any third party, the recipient, the provider of the recipient's medical services or any person who received the third-party benefits.

41. Section 409.910(6)(a) provides AHCA's procedure to recover the full amount paid for medical assistance, as follows:

> The agency is automatically subrogated to any rights that an applicant, recipient, or legal representative has to any third-party benefit for the full amount of medical assistance provided by Medicaid. Recovery pursuant to the subrogation rights created hereby shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, but is to provide full recovery by the agency from any and all third-party benefits. Equities of a recipient, his or her legal representative, a recipient's creditors, or health care providers shall not defeat, reduce, or prorate recovery by the

agency as to its subrogation rights granted under this paragraph.

42. Section 409.910(11)(f) provides a formula to establish the amount AHCA may recover from a settlement, as follows:

> (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.

43. In the instant matter, applying the formula set forth in section 409.910(11)(f), to the $1,000,000.00 settlement, results in AHCA being owed $331,682.12 to satisfy the Medicaid lien. Petitioner, however, asserts that a lesser amount is owed to AHCA.

44. Section 409.910(17)(b) provides an administrative procedure for determining whether a lesser portion of the total recovery should be allocated as reimbursement for past medical expenses, instead of the amount calculated pursuant to section 409.910(11)(f). Section 409.910(17)(b) provides, in pertinent part:

> A recipient 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. . . . 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.

The undersigned notes, as stated in paragraph 37 above, that the preponderance of the evidence, rather than the clear and convincing evidence, standard applies in this proceeding.

45. The formula set forth in section 409.910(11)(f), provides an initial determination of AHCA's recovery for past medical expenses paid on a Medicaid recipient's behalf, and section 409.910(17)(b) sets forth an administrative procedure for adversarial challenge of that recovery. "[W]hen AHCA has not participated in or approved a settlement, the administrative procedure created by section 409.910(17)(b), serves as a means for determining whether a lesser portion of the total recovery should be allocated as reimbursement for medical expenses in lieu of the amount calculated by application of the formula in section 409.910(11)(f)." Eady v. Ag. for Health Care Admin., 279 So. 3d 1249, 2019 Fla. App. LEXIS 13685 at *14 (Fla. 1st DCA Sept. 12, 2019)(quoting Delgado, 2018 Fla. App. LEXIS at *3 (bracketed language omitted)). In order to successfully challenge the amount payable to AHCA, the Medicaid recipient must prove, by a preponderance of the evidence, that a lesser portion of the total recovered should be allocated as reimbursement for past medical expenses than the amount AHCA has calculated pursuant to the formula in section 409.910(11)(f). See Gallardo, 263 F. Supp. at 1260.

46. Where the Medicaid recipient presents uncontradicted testimony, there must be a "reasonable basis in the evidence" to reject it. Giraldo v. Ag. for Health Care Admin., 248 So. 3d 53, 56 (Fla. 2018); Larrigui-Negron v. Ag. for Health Care Admin., 2019 Fla. App. LEXIS 15410 (Fla. 1st DCA Oct. 11, 2019); Eady, 2019 Fla. App. LEXIS at *23-24.

47. Here, Petitioner proved, by a preponderance of the evidence, that $1,000,000 represents 15.7 percent of Petitioner's medical malpractice and wrongful death claim valued at $6,372.654.53. As a result, the uncontroverted evidence demonstrates that AHCA's full Medicaid lien should be reduced by the percentage that Petitioner's recovery represents the total value of Petitioner's claim. The preponderance of the evidence further establishes that the total value of Petitioner's medical malpractice and wrongful death claim is $6,372,654.53, and that the $1,000,000.00 settlement resulted in Petitioner recovering 15.7 percent of Elisha's past medical expenses. When applying the percentage allocation of 15.7 percent to the past medical expenses of $372,654.53, the result is $58,506.76, which constitutes the share of the settlement proceeds fairly and proportionally attributable to Petitioner's recovery of past medical expenses. In addition, the preponderance of the evidence establishes that $58,506.76 amounts to a fair and reasonable

determination of the past medical expenses actually recovered by Petitioners and payable to AHCA.

48. While AHCA offered no evidence to counter Mr. Zauzig's and Mr. Barrett's testimony, it argued in its Proposed Final Order that their testimony was insufficient to support a finding of fact as to allocation of past medical expenses to the settlement. The undersigned found that Mr. Zauzig's and Mr. Barrett's uncontradicted expert testimony established that each had considerable expertise in making such determinations, and that Petitioner presented sufficient and uncontradicted evidence that established that $58,506.76 as the settlement portion properly allocated to past medical expenses.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Agency for Health Care Administration is entitled to $58,506.76 as satisfaction of its Medicaid lien.

DONE AND ORDERED this 13th day of December, 2019, in Tallahassee, Leon County, Florida.

ROBERT J. TELFER III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of December, 2019.

ENDNOTE

[1/] The parties, in their Joint Pre-hearing Stipulation, did not dispute that "burden of proof for a Medicaid recipient to successfully contest the amount payable to AHCA pursuant to the formula [set forth in] § 409.910(11)(f) is a preponderance of the evidence."

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.