

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MITCHELL WILLIAMS, INDIVIDUALLY,

Petitioner,

vs.

Case No. 19-5338MTR

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

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FINAL ORDER

A formal hearing was conducted in this case on November 22, 2019, via video teleconference from sites in Pensacola and Tallahassee, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jason Dean Lazarus, Esquire  
Special Needs Law Firm  
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2420 South Lakemont Avenue  
Orlando, Florida 32814

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

The issue in this proceeding is how much of Petitioner's settlement proceeds should be paid to Respondent, Agency for

Health Care Administration ("AHCA"), to satisfy AHCA's Medicaid lien under section 409.910, Florida Statutes.<sup>1/</sup>

PRELIMINARY STATEMENT

On October 9, 2019, Petitioner, Mitchell Williams, filed with the Division of Administrative Hearings a pleading styled "Petition to Determine Medicaid's Lien Amount to Satisfy Claim Against Personal Injury Recovery by the Agency for Health Care Administration" (the "Petition"). The Petition challenged AHCA's lien for recovery of medical expenses paid by Medicaid in the amount of \$70,460.35. Petitioner asserted that established case law provides for the reimbursement of a lesser amount of the total third-party settlement proceeds than the amount calculated by AHCA pursuant to the formula established in section 409.910(11)(f).

The case was scheduled for hearing on November 22, 2019, on which date it was convened and completed. Prior to the hearing, the parties submitted a Pre-hearing Stipulation, which has been accepted and incorporated into the Findings of Fact in this Final Order.

At the hearing, Petitioner testified on his own behalf and offered the testimony of John Wesley, the attorney who represented him in connection with his personal injury claim; and attorney Charles Beall, who was accepted as an expert in the valuation of personal injury claims. Petitioner's Exhibits 1

through 4 were admitted into evidence. AHCA presented no witnesses and offered no exhibits.

No transcript of the hearing was ordered. The parties agreed to submit their proposed final orders within 10 days of the hearing date. Petitioner timely filed his Proposed Final Order on November 27, 2019.

AHCA submitted a Proposed Final Order on December 4, 2019, two days after the agreed-upon deadline. No objection was made to the late filing. Therefore, ACHA's Proposed Final Order has been considered in the preparation of this Final Order.

#### FINDINGS OF FACT

1. On the night of April 2, 2015, Mitchell Williams was riding his bicycle along a public sidewalk in Destin, Florida. The sidewalk intersected privately-owned driveways. At the north side of a privately-owned driveway at 239 Main Street, the concrete was broken at the point where the sidewalk and private driveway connected. The broken concrete created a dangerous condition to anyone riding along the sidewalk. Mr. Williams rode his bicycle into soft sand where the sidewalk should have been, causing his front wheel to bury into the sand before striking the leading edge of the undamaged portion of the sidewalk. Mr. Williams flipped over the handlebars of his bicycle and struck the concrete sidewalk face first.

2. Mr. Williams underwent an anterior cervical discectomy and fusion ("ACDF"), placement of an inferior vena cava ("IVC") filter, open reduction and internal fixation ("ORIF") of a nasal maxillary fracture, and repair of facial lacerations.

Mr. Williams was hospitalized for nine months. During his post-operative hospitalization, Mr. Williams developed stage IV decubitus ulcers that left him with significant scar tissue over his tailbone.

3. The accident rendered Mr. Williams a partial quadriplegic from a cervical spinal cord injury. He remains confined to a wheelchair for mobility. Mr. Williams is totally dependent on others for his activities of daily living.

4. Mr. Williams made a personal injury damages claim against the owner of the sidewalk, the City of Destin ("City").

5. On or about April 29, 2019, Mr. Williams entered into a pre-suit settlement of his tort claim against the City for \$200,000, the statutory maximum provided by section 768.28(5), Florida Statutes. Because the City tendered the full amount for which it could be held liable, no express allocation for past medical expenses was made in the settlement.

6. After settling with the City, Mr. Williams brought an action against Wagih Gargas, Gargas Commercial and City Produce of Fort Walton Beach, alleged as tortfeasors by virtue of their ownership and/or control of the private driveway where

Mr. Williams was injured. The case against these parties remains pending with a very uncertain outcome as to liability.

7. AHCA was properly notified of Mr. Williams's personal injury action and indicated it had paid benefits related to his injuries in the amount of \$70,460.35. AHCA's payments were the only payments made for Mr. Williams's past medical expenses. AHCA has asserted a lien for the full amount of \$70,460.35 against Mr. Williams's settlement proceeds.

8. Mr. Williams will never fully recover from his injuries. He will require medical treatment and assistance with his activities of daily living for the rest of his life.

9. Application of the formula in section 409.910(11)(f) would require Mr. Williams to pay back Medicaid all of its \$70,460.35 lien. Mr. Williams contends that only a fraction of the settlement represents his recovery for past medical expenses.

10. Sections 409.910(11)(f) and 409.910(17)(b), as amended, provide for recovery by Medicaid for future medical expenses as well as past medical expenses. Section 409.910(17)(b) further imposes a clear and convincing burden of proof on a recipient attempting to show that the portion of the total recovery that should be allocated as past and future medical expenses is less than the amount calculated by AHCA.

11. However, in Gallardo v. Dudek, 263 F. Supp. 3d 1247 (N.D. Fla. 2017), the court held that the provisions allowing Medicaid to recover future medical expenses and imposing a clear and convincing standard on recipients contesting AHCA's calculations violate and are preempted by federal law. The parties have stipulated that Gallardo v. Dudek preempts the application of the future medical expenses provision and that Petitioner's burden of proof in this section 409.910(17)(b) proceeding is a preponderance of the evidence. See also Giraldo v. Ag. for Health Care Admin., 248 So. 3d 53 (Fla. 2018) (under federal law AHCA may only reach the past medical expenses portion of a Medicaid recipient's tort recovery to satisfy its Medicaid lien).

12. At the hearing, Mr. Williams testified as to the extent of the injuries and damages he suffered in the April 2, 2015, bicycle accident. Mr. Williams testified persuasively as to the overwhelming impact of the injuries on his life. Prior to the accident, Mr. Williams made a good living as a skilled carpenter and enjoyed fishing and golfing in his spare time. None of these activities is possible now. He is an "incomplete" quadriplegic, meaning that he is confined to a wheelchair but has limited use of his arms.

13. John Wesley is the attorney who represented Mr. Williams in his personal injury lawsuit. Mr. Wesley is an

18-year practicing attorney who is board certified in civil trial practice. He is a partner with Wesley, McGrail & Wesley in Ft. Walton Beach. Mr. Wesley testified that he handles catastrophic personal injury and death cases, including cases involving injuries similar to those suffered by Mr. Williams.

14. Mr. Wesley regularly evaluates the damages suffered by injured people. He testified that he does all of his work on a contingency fee basis, which makes the valuation of cases critical to his livelihood. Mr. Wesley's representation of Mr. Williams gave him intimate familiarity with his client's injuries and damages.

15. Mr. Wesley testified that there are two aspects to the valuation of a case: liability and damages. As to liability, the attorney must ask whether the potential client is partly or wholly responsible for his own injuries due to factors such as comparative negligence or alcohol intake, and whether the tortfeasor is shielded under a legal concept such as sovereign immunity. The attorney must then decide whether the damages are worth pursuing even if the tortfeasor's liability is unquestioned.

16. Mr. Wesley testified that there was no question in this case as to the damages, which were catastrophic. The problem in Mr. Williams's case was liability, because of the presence of contributory negligence and alcohol defenses. The

most significant factor limiting Mr. Williams's recovery was the sovereign immunity cap on damages. The City of Destin tendered \$200,000, the full limit it would be required to pay under the cap. To recover more would require passing a claim bill in the legislature, an unlikely outcome given Mr. Williams's contributory negligence. Under the circumstances, Mr. Wesley determined that nothing further could be recovered from the City. Mr. Williams's net recovery, after attorney's fees, was \$140,000.

17. Mr. Wesley provided detailed testimony about how the accident occurred and the mechanism of injury. He credibly testified regarding the process he undertook in evaluating and arriving at his opinion related to the value of the damages suffered by Mr. Williams. He met with Mr. Williams, evaluated the facts of the case, reviewed all the medical information and all other records and reports regarding Mr. Williams's injuries, analyzed liability issues and comparative fault, developed economic damages estimates, and valued non-economic damages such as past and future pain and suffering, loss of capacity to enjoy life, and mental anguish.

18. Mr. Wesley testified that the full value of Mr. Williams's damages was likely in excess of \$19 million. That figure included Mr. Williams's pain and suffering, mental anguish, loss of quality of life, and economic damages.



Mr. Wesley testified that non-economic damages were the greatest element of the damages sustained by Mr. Williams, and therefore were the largest driver of the valuation and the greatest portion of damages recovered in the settlement.

19. Mr. Wesley stated that he used a very conservative valuation figure of \$6 million for the purpose of resolving Medicaid's lien, rather than his actual valuation of more than \$19 million. If the conservative valuation of \$6 million is accepted, then the \$200,000 recovery is only 3.33 percent of the value of the damages. Mr. Williams's \$140,000 net recovery amounted to only 2.33 percent of the full measure of his damages. Mr. Wesley's testimony was uncontroverted, reasonable, and persuasive.

20. Charles F. Beall, Jr., a member of the Pensacola firm Moore, Hill & Westmoreland, P.A., testified on behalf of Mr. Williams. Mr. Beall is board certified in both civil trial and appellate practice. His practice focuses on defending large scale personal liability and mass tort cases. Mr. Beall has handled more than 225 appellate cases in state and federal courts. His cases have resulted in over 60 published opinions. At the trial court level, Mr. Beall has represented hundreds of clients ranging from individual homeowners to multinational corporations in a wide variety of civil litigation, including product liability suits, contract claims, and insurance coverage

disputes. He has tried more than a dozen civil jury trials to verdict as lead counsel and has served on the trial team for several multi-week trials. Mr. Beall was accepted without objection as an expert in the valuation of personal injury claims.

21. Mr. Beall and his firm specialize in defending serious and catastrophic personal injury cases throughout Florida. Mr. Beall has reviewed thousands of personal injury cases and formally reported potential verdicts and valuations to insurance companies that have retained him to defend their insureds. Mr. Beall has worked closely with economists and life care planners to identify the relevant damages of persons suffering catastrophic injuries. Mr. Beall testified that he has handled cases involving catastrophic injuries similar to those suffered by Mr. Williams.

22. Mr. Beall testified that he arrived at his valuation opinion by examining all the elements of damages suffered by Mr. Williams. He agreed with Mr. Wesley that Mr. Williams's greatest element of loss was non-economic damages. Mr. Beall reviewed numerous verdicts that had been affirmed on appeal involving injuries similar to those suffered by Mr. Williams. Mr. Beall opined that the valuation of the total damages suffered by Mr. Williams was in excess of \$10 million. He

agreed that Mr. Wesley's more conservative \$6 million valuation was appropriate for purposes of the lien reduction formula.

23. AHCA did not offer any witnesses or documentary evidence to question the credentials or opinions of either Mr. Wesley or Mr. Beall. AHCA did not offer testimony or documentary evidence to rebut the testimony of Mr. Wesley and Mr. Beall as to valuation or the reduction ratio. AHCA did not offer alternative opinions on the damage valuation method suggested by either Mr. Wesley or Mr. Beall, both of whom testified knowledgably and credibly as experienced practitioners.

24. The testimony of Petitioner's two experts regarding the total value of damages was credible, unimpeached, and unrebutted. Petitioner proved that the settlement of \$200,000 does not begin to fully compensate Mr. Williams for the full value of his damages.

25. Petitioner asserts that the settlement allocation should be based on the ratio between the net settlement, \$140,000, and the conservative valuation of \$6 million, meaning that 2.33 percent of the settlement proceeds should be allocated to past medical expenses. Petitioner cited no authority and the undersigned is not otherwise persuaded that section 409.910 allows attorney's fees to be deducted from the settlement prior

to calculating the percentage of the settlement that should be allocated to past medical expenses.

26. With that correction, the undersigned finds that Petitioner has proven by a preponderance of the evidence that 3.33 percent (the ratio that \$200,000 bears to \$6 million) is the appropriate pro rata share of Mr. Williams's past medical expenses to be applied to determine the amount recoverable by AHCA in satisfaction of its Medicaid lien.

27. ACHA's lien for past medical expenses is \$70,460.35. Applying the 3.33 percent pro rata ratio to this total yields \$2,346.33, which is the portion of the settlement representing reimbursement for past medical expenses and the amount recoverable by AHCA for its lien.

#### CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569, 120.57(1), and 409.910(17), Fla. Stat.

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

30. 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.

31. 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 AHCA 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, AHCA's recovery is limited to those proceeds allocable to past medical expenses.

32. Section 409.910(11)(f) limits AHCA'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, not to exceed the total amount actually paid by Medicaid on the recipient's behalf. In this case, application of the formula would result in AHCA recovering the full amount of the lien.

33. However, section 409.910(17)(f) provides a method by which a Medicaid recipient may contest the amount designated as recovered Medicaid expenses payable under section 409.910(11)(f). To successfully challenge the amount payable to AHCA, 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 AHCA pursuant to the formula. Gallardo, 263 F. Supp. 3d 1247.

34. Where uncontradicted testimony is presented by the recipient, the factfinder must have a "reasonable basis in the record" to reject it. Giraldo, 248 So. 3d at 56 (quoting Wald v. Grainger, 64 So. 3d 1201, 1205-06 (Fla. 2011)). In the instant case, AHCA has provided no reasonable basis to reject the testimony of Mr. Wesley and Mr. Beall.

35. Petitioner proved by a preponderance of the evidence that the settlement proceeds of \$200,000 represent only 3.33 percent of Petitioner's claim valued at \$6 million, which both testifying attorneys reasonably believed was a very conservative valuation. Therefore, AHCA's Medicaid lien should be reduced to the ratio of Petitioner's actual recovery to the total value of his claim.

36. The application of the 3.33 percent ratio to the Medicaid lien amount of \$70,460.35 results in \$2,346.33. This amount represents that share of the settlement proceeds fairly and proportionately attributable to expenditures that were actually paid by AHCA for Petitioner's past medical expenses.

#### ORDER

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

The Agency for Health Care Administration is entitled to \$2,346.33 in satisfaction of its Medicaid lien.

DONE AND ORDERED this 19th day of December, 2019, in Tallahassee, Leon County, Florida.

*Lawrence P. Stevenson*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of December, 2019.

ENDNOTE

<sup>1/</sup> Citations will be to Florida Statutes (2018) unless otherwise indicated.

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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.