

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CHRISTOPHER SCIESINSKI,

Petitioner,

vs.

Case No. 20-3573MTR

AGENCY FOR HEALTH CARE
ADMINISTRATION, AND SUNSHINE
HEALTH PLANS, INC.,

Respondents.

FINAL ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, via Zoom video conference on December 9, 2020, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner Christopher Sciesinski:

Floyd B. Faglie, Esquire
Staunton & Faglie, PL
189 East Walnut Street
Monticello, Florida 32344

For Respondent Agency for Health Care Administration:

Alexander R. Boler, Esquire
2073 Summit Lake Drive, Suite 330
Tallahassee, Florida 32317

For Respondent Sunshine Health Plans, Inc.:

Seann M. Frazier, Esquire
Parker, Hudson, Rainer & Dobbs, LLP
215 South Monroe Street, Suite 750
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STATEMENT OF THE ISSUE

What amount from Petitioner's settlement proceeds should be paid to satisfy Respondents' Medicaid liens under section 409.910, Florida Statutes (2020)?¹

PRELIMINARY STATEMENT

On August 12, 2020, Christopher Sciesinski (Petitioner or Mr. Sciesinski) filed with the Division of Administrative Hearings (DOAH) a Petition to Determine Amount Payable to Satisfy Medicaid Lien. At the final hearing, Petitioner offered testimony from Scott Borders, Esquire, and Karen Gievers, Esquire. Neither the Agency for Health Care Administration (AHCA) nor Sunshine Health Plans, Inc. (Sunshine), called witnesses to testify on its behalf.

Petitioner's Exhibits 1 through 10 were admitted into evidence. Neither AHCA nor Sunshine offered exhibits into evidence. The parties filed a pre-hearing stipulation that included 13 admitted and undisputed facts. Findings of Fact 1 through 13 set forth those stipulations and agreements in near-verbatim form.

A Transcript of the final hearing was filed with DOAH on January 21, 2021. On February 9, 2021, an Order was entered granting the parties' Joint Motion for Extension of Time to File Proposed Orders. On or about

¹ All subsequent references to Florida Statutes are to the 2020 version, unless otherwise indicated.

February 15, 2021, each party filed a proposed order, and the same have been considered in the preparation of this Final Order.

FINDINGS OF FACT

1. On January 28, 2018, Mr. Sciesinski[,] who was then 43 years old, was admitted to the Hospital with an epidural abscess and a[n] oral abscess. He was treated with antibiotics and had his oral abscess lysed and molars removed. In February 2018[,] he presented to the Hospital with shaking, chills, fevers[,] and malaise. His antibiotics were changed and he was discharged home. On May 30, 2018[,] Mr. Sciesinski again presented to the [H]ospital with increasing neck pain. He was diagnosed with a retropharyngeal abscess and underwent surgery. During surgery[,] Mr. Sciesinski suffered a spinal cord injury permanently rendering Mr. Sciesinski a quadriplegic. Mr. Sciesinski is now unable to stand, walk, ambulate, eat, toilet, or care for himself in any manner.

2. Mr. Sciesinski's medical care related to the injury was paid by Medicaid. AHCA through the Medicaid program provided \$56,838.94 in Medicaid benefits related to the injury and Sunshine through the Medicaid program provided \$78,957.18 in Medicaid benefits related to the injuries. The sum of these benefits, \$135,796.12, constituted Mr. Sciesinski's claim for past medical expenses.

3. Mr. Sciesinski pursued a medical malpractice action against the parties allegedly liable for his injuries (Defendants) to recover all his damages associated with his injuries.

4. Mr. Sciesinski's medical malpractice action was settled through a series of confidential settlements in a lump-sum unallocated amount of \$1,725,000.

5. During the pendency of Mr. Sciesinski's medical malpractice action, AHCA and Sunshine were notified of the action. AHCA asserted a \$56,838.94 Medicaid lien and Sunshine asserted a \$78,957.18 lien against Mr. Sciesinski's cause of action and settlement of that action.

6. AHCA and Sunshine did not commence a civil action to enforce [their] rights under [section] 409.910 or intervene or join in Mr. Sciesinski's action against the Defendants.

7. By letter, AHCA and Sunshine were notified of Mr. Sciesinski's settlement.

8. AHCA and Sunshine have not filed a motion to set-aside, void[,] or otherwise dispute Mr. Sciesinski's settlement.

9. The Medicaid program through AHCA and AHCA's contractor[,] Sunshine[,] spent \$135,796.12 on behalf of Mr. Sciesinski, all of which represents expenditures paid for Mr. Sciesinski's past medical expenses.

10. Mr. Sciesinski's taxable costs incurred in securing the settlement totaled \$48,943.00.

11. Application of the formula at [section] 409.910(11)(f) to Mr. Sciesinski's \$1,725,000 settlement requires full payment of AHCA's \$56,838.94 Medicaid lien and Sunshine's \$78,957.18 Medicaid lien.

12. The Petitioner has deposited the Medicaid lien amount in an interest-bearing account for the benefit of AHCA pending an administrative determination of AHCA's rights, and this constitutes "final agency action" for purposes of chapter 120[,] [Florida Statutes], pursuant to [section] 409.910(17).

13. Sunshine is under contract with AHCA to provide Medicaid benefits to Medicaid beneficiaries. Pursuant to AHCA's contract with Sunshine, AHCA's Medicaid lien takes priority and must be paid first from the amount of the settlement allocated to past medical expenses.

14. As previously noted, Petitioner presented testimony from Scott Borders, Esquire, and Karen Gievers, Esquire. Mr. Borders represented Petitioner in his personal injury claim against the tortfeasors, and Ms. Gievers and Mr. Borders both offered opinion testimony regarding the value of Petitioner's underlying personal injury claim(s).

15. Mr. Borders has been a trial attorney for 32 years, and he practices exclusively in the area of medical malpractice law. Mr. Borders has been Florida Bar Board Certified in the area of “civil trial” since 1997. Mr. Borders credibly testified that based on his professional training and experience, Petitioner’s claim(s) were valued at between \$27 and \$41 million.

16. Ms. Gievers has been a member of The Florida Bar since 1978, and has been Florida Bar Board Certified in the area of “civil trial” since 1985. From 1978 until 2010, Ms. Gievers practiced in the area of personal injury law. In 2010 she was elected Circuit Judge of the Second Judicial Circuit for the State of Florida. As a Circuit Judge, Ms. Gievers presided over all manner of civil matters, including personal injury lawsuits. Ms. Gievers retired from the bench in April 2019, and has returned to the practice of law. Ms. Gievers credibly testified that based on her professional training and experience, Petitioner’s claim(s) had a value of at least \$25 million, and that this amount is “very conservative.”

17. Using the pro rata allocation methodology, Ms. Gievers and Mr. Borders testified that \$9,369.93 of the \$1,725,000 settlement proceeds should be allocated to past medical expenses because the personal injury claims were settled for 6.9 percent of its conservative value. The testimony of Ms. Gievers and Mr. Borders was credible, persuasive, and uncontradicted by Respondents.

CONCLUSIONS OF LAW

18. DOAH has jurisdiction over the subject matter and the parties pursuant to sections 120.569, 120.57(1), and 409.910(17), Florida Statutes.

19. Petitioner’s burden of proof in this case is the clear and convincing evidence standard. § 409.910(17)(b), Fla. Stat.; *Gallardo by & through Vassallo v. Dudek*, 963 F.3d 1167, 1182 (11th Cir. 2020) (finding no conflict between the clear and convincing standard and federal law).

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

21. The Medicaid program "provide[s] federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Harris v. McRae*, 448 U.S. 297, 301 (1980). If a state participates in the Medicaid program, it must comply with federal requirements governing the program. *Id.*

22. Federal law requires states to seek reimbursement for medical expenses incurred on behalf of Medicaid recipients who recover from third parties. *See Ark. Dep't of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 276 (2006). Florida's Legislature enacted section 409.910 to comply with that requirement. Section 409.910(7) requires AHCA to recover for Medicaid funds paid for a Medicaid recipient's medical care when the recipient later receives a personal injury judgment or settlement from a third party. *Smith v. Ag. for Health Care Admin.*, 24 So. 3d 590 (Fla. 5th DCA 2009). The statute imposes an automatic lien on the proceeds of any judgment or settlement for the medical services provided by Medicaid. § 409.910(6)(c), Fla. Stat.

23. The formula in section 409.910(11)(f) determines the amount AHCA may recover from a judgment, award, or settlement from a third party for Medicaid medical expenses. *Ag. for Health Care Admin. v. Riley*, 119 So. 3d 514, 515 n.3 (Fla. 2d DCA 2013). Section 409.910(17)(b) establishes the right to contest a Medicaid lien before DOAH, and provides that section 409.910(11) establishes the default allocation of damage amounts attributable to medical costs. *See Harrell v. State*, 143 So. 3d 478, 480 (Fla. 1st DCA 2014) (adopting the holding in *Riley* that petitioner "should be afforded an opportunity to seek the reduction of a Medicaid lien amount established by the statutory default allocation by demonstrating, with evidence, that the lien amount exceeds the amount recovered for medical expenses," quoting *Roberts v. Albertson's, Inc.*, 119 So. 3d 457, 465-66 (Fla. 4th DCA 2012), *reh'g and reh'g en banc denied sub nom. Giorgione v.*

Albertson's, Inc., 2013 Fla. App. LEXIS 10067 (Fla. 4th DCA June 26, 2013)). The Medicaid recipient may prove that a different allocation is the correct allocation.

24. Petitioner's persuasive, un rebutted, and unimpeached expert testimony proves by clear and convincing evidence that the settlement proceeds of \$1,725,000 represents 6.9 percent of Petitioner's claim valued conservatively at \$25,000,000 ($\$1,725,000/\$25,000,000$). The total Medicaid lien amount of \$135,796.12 should be reduced by the percentage that Petitioner's recovery represents of the total value of Petitioner's claim. Accordingly, \$9,369.93 constitutes a fair, reasonable, and accurate share of the total recovery for past medical expenses actually paid through the Medicaid program.²

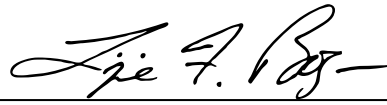
25. The First District Court of Appeal recently accepted the pro rata method used for this determination as sufficient proof of a fair allocation of a settlement amount. *Soto v. Ag. for Health Care Admin.*, Case No. 1D17-5387, 2020 WL 6777558 (Fla. 1st DCA Nov. 18, 2020)(reversing *Soto v. Ag. for Health Care Admin.*, Case No. 17-4556MTR (Fla. DOAH Nov. 28, 2017) for rejecting a pro rata allocation like the one proven in this proceeding.). See also *Bryan v. State*, 291 So. 3d 1033 (Fla. 1st DCA 2020); *Larrigui-Negron v. Ag. for Health Care Admin.*, 280 So. 3d 550 (Fla. 1st DCA 2019).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent, Agency for Health Care Administration, is entitled to recover \$9,369.93 in satisfaction of its Medicaid lien.

² As previously noted, the parties stipulate that Sunshine is under contract with AHCA to provide Medicaid benefits to Medicaid beneficiaries, and that Sunshine's lien interest herein is subordinate to that of AHCA. Whether the contract provides for any recovery by Sunshine from the amount owed by Petitioner to AHCA is not before the undersigned, and therefore the recovery amount of \$9,369.93 is allocated only to AHCA.

DONE AND ORDERED this 16th day of March, 2021, in Tallahassee, Leon
County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of March, 2021.

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.