STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARIA DEL ROSARIO GUZMAN AS
GUARDIAN OF GUSTAVO SANCHEZ, JR.,
INCOMPETENT,

Petitioner, Case No. 21-0040MTR

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

This case came before Administrative Law Judge ("ALJ") John G. Van Laningham, Division of Administrative Hearings ("DOAH"), for final hearing by Zoom teleconference on March 12, 2021.

APPEARANCES

For Petitioner: Darryn L. Silverstein, Esquire
Gregg A. Silverstein, Esquire
Silverstein, Silverstein & Silverstein, P.A.
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For Respondent: Alexander R. Boler, Esquire
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STATEMENT OF THE ISSUES

The issues for determination are, first, whether a lesser portion of Petitioner's total recovery from a third-party tortfeasor should be designated as recovered medical expenses than the share presumed by statute; if so,

then the amount of Petitioner's recovery to which Respondent's Medicaid lien may attach must be determined.

PRELIMINARY STATEMENT

Petitioner Maria Del Rosario Guzman ("Guzman"), as guardian of Gustavo Sanchez, Jr. ("Sanchez"), settled a personal injury action for $850,000.00. Respondent Agency for Health Care Administration (the "Agency" or "AHCA") asserted its intent to enforce a Medicaid lien in the amount of $253,843.04 against this recovery. The Agency relies, as is its right, on the formula set forth in section 409.910(11)(f), Florida Statutes, to determine that portion of the settlement which should be allocated as past medical expense damages.

Guzman objected to this presumptive allocation of the recovery, and, on January 6, 2021, she timely filed a petition with DOAH to contest the default amount designated by statute as recovered medical expense damages payable to the Agency.

On March 5, 2021, the parties filed a Joint Pre-hearing Stipulation, which contains a statement of facts that "are admitted and will require no proof at hearing." As a result, many of the material historical facts of this case are undisputed.

At the final hearing, which took place as scheduled on March 12, 2021, with both parties present, Guzman called trial attorneys Darryn L. Silverstein and Kenneth Bush as witnesses, and she also presented the testimony of defense attorney Andrew Stone. Petitioner's Exhibits 1, 4, 6, 9, and 10 were received in evidence without objection. The Agency rested without offering any evidence.

The final hearing transcript was filed on April 12, 2021. The parties timely filed proposed final orders, which have been considered.

Unless otherwise indicated, citations to the official statute law of the state of Florida refer to Florida Statutes 2020.

FINDINGS OF FACT

1. On March 26, 2014, Sanchez, who was then 19 years old, suffered a subdural hematoma while sparring at a boxing training facility, which resulted in catastrophic brain damage. At the time of the hearing, seven years after the injury, Sanchez remained extremely impaired. He cannot care for himself, will not be able to work again, and will most likely be significantly incapacitated for the rest of his life. There is no dispute that Sanchez is permanently disabled from the severe brain trauma that occurred while he was in the boxing ring.

2. Sanchez's injury-related medical care was paid for by Medicaid. A portion of his Medicaid benefits, totaling $253,843.04, was paid by AHCA. An even larger share of Sanchez's Medicaid benefits, $555,439.81, was paid by Sunshine Health Plan, Inc. ("Sunshine"), which operates a Medicaid managed care plan pursuant to a contract with AHCA. The combined amount of these benefits, $809,282.85, constitutes Sanchez's entire claim for past medical expenses.

3. Sanchez's mother and guardian, Guzman, brought a personal injury lawsuit on Sanchez's behalf (collectively, the "Plaintiff") against the owner of the gym (the "Defendant"), alleging that the Defendant was negligent in allowing Sanchez to box. The Defendant, whose liability coverage limit was $1,000,000.00, raised multiple defenses to the personal injury claims.

4. The underlying negligence action presented a difficult case for the Plaintiff, both factually and legally, for several reasons. To begin, Sanchez had a preexisting seizure disorder, which he apparently never disclosed to the

gym. Moreover, he had been hospitalized previously due to seizures and advised by his doctor to avoid contact sports. Sanchez also had executed a waiver of liability in favor of the gym prior to training at the facility. There was even a question of fact as to whether the injury Sanchez suffered on March 26, 2014, resulted from a blow to the head or rather from a seizure that would have occurred regardless of where he was at the time.

5. In short, as a personal injury plaintiff, Sanchez faced an uphill battle, for the Defendant had multiple promising defenses (waiver, assumption of the risk, comparative negligence) and strong positions on liability (duty, causation). Guzman candidly disclosed these issues at hearing and presented a fair, balanced assessment of the strengths and weaknesses of the Plaintiff's case, eliciting testimony not only from the Plaintiff's attorney, Mr. Silverstein, but also from the Defendant's counsel, Mr. Stone.

6. The personal injury action was settled for $850,000.00, a figure which was below the limits of available insurance, and a mere fraction of Sanchez's monetary damages. Both sides were represented by experienced and competent attorneys, and the agreed upon payment, resulting from an arms-length negotiation, reflects the full settlement value ("Claim Value") of the Plaintiff's tort claims. Sanchez, in other words, recovered 100% of the Claim Value of his personal injury action against the Defendant.

7. As mentioned, however, the Plaintiff settled for a tiny portion of his total damages ("Total Value"). To be more precise, whereas Sanchez recovered 100% of his Claim Value, the settlement yielded him only 3.4% of the Total Value of his damages. This was due to the substantial risk of the Plaintiff's coming up empty-handed if the lawsuit were adjudicated. As the Defendant's counsel, Mr. Stone, explained, even if the Plaintiff managed to survive summary judgment, which was not a sure thing, the likelihood of a defense verdict was high. Still, Mr. Stone agreed that the severity of Sanchez's disabilities would translate into enormous monetary damages if the jury found in the Plaintiff's favor. This was the strength of the Plaintiff's

case. A jury award could have exposed the Defendant to a catastrophic judgment in excess of policy limits. The settlement was a prudent decision for both sides, given the Defendant's potential exposure and the Plaintiff's long odds.

8. AHCA was notified of the personal injury action. AHCA did not "institute, intervene in, or join in" the personal injury action to enforce its rights as provided in section 409.910(11), or participate in any aspect of the personal injury action against the Defendant.

9. Instead, AHCA asserted a $253,843.04 Medicaid lien against Sanchez's cause of action and settlement of that action. By letter, AHCA was notified of the settlement. AHCA has not filed a motion to set-aside, have declared void, or otherwise disputed Sanchez's settlement.

10. The Medicaid program, through AHCA and Sunshine, spent $809,282.85 on behalf of Sanchez, all of which represents expenditures paid towards Sanchez's past medical care and treatment. Sanchez's taxable costs incurred in securing the $850,000.00 settlement totaled $12,987.78. Application of the section 409.910(11)(f) formula to Sanchez's $850,000.00 recovery produces a statutory default allocation of $312,256.11 in settlement funds to past medical expenses, which would satisfy AHCA's Medicaid lien in full and leave a balance of $58,413.07 for reimbursing Sunshine.[1] Sunshine, however, reportedly settled with Sanchez (presumably with AHCA's approval) before the hearing and agreed to accept $18,884.00, or 3.4% of its expenditures.

11. There is no dispute that, under the anti-lien provisions in the federal Medicaid statute, the Medicaid lien attaches only to the portion of Sanchez's

[1] At the outset of the hearing, AHCA's counsel stipulated that there is, in effect, only one Medicaid lien, the proceeds of which are divided between AHCA and Sunshine, presumably pursuant to the contract between them. According to the Joint Pre-hearing Stipulation, the allocation under section 409.910(f) is used to pay AHCA first, and, if AHCA is fully reimbursed, then Sunshine it entitled to the remainder. Thus, even in Sunshine's best-case scenario, Sunshine's recovery was capped at about 10.5% of its expenditures.

recovery attributable to past medical expenses. Sanchez's recovery, however, was an undifferentiated lump sum payment, meaning that the parties did not negotiate an apportionment of the settlement proceeds as between the several categories of damages comprising the Total Value of Sanchez's loss.

12. The ultimate question presented is whether the Agency's default distribution, in the amount of $312,256.11, reflects "the portion of the total recovery which should be allocated"[2] to Sanchez's recovery of past medical damages, or whether a lesser sum, from the total settlement, "should be allocated" to the recovery of past medical damages. It is Guzman's burden to prove that the statutory allocation is greater than the amount which "should be" distributed to the Agency, and that the default Medicaid lien amount "should be" adjusted to better reflect the portion of the Plaintiff's total recovery attributable to past medical expenses.

13. To meet her burden, Guzman presented evidence at hearing, as is now typically done in cases such as this, with the goal of establishing the "true value" of the Plaintiff's damages. Usually, and again as here, this evidence comes in the form of opinion testimony, from a trial attorney or attorneys who specialize in personal injury law and represent plaintiffs in negligence actions.

14. Guzman called two experienced plaintiff's personal injury lawyers, one of whom represented the Plaintiff in the underlying personal injury lawsuit, to give opinions on the valuation of his damages. She presented the testimony, as well, of the Defendant's counsel, whose conclusion that the full value of Sanchez's damages ranged from $35 million to $40 million was compelling. The undersigned finds the opinions of these attorneys on valuation of damages to be credible and persuasive. Moreover, the Agency did not offer any evidence to challenge Guzman's proof of the full value of the Plaintiff's damages. Having no evidential basis for discounting or

[2] *See* § 409.910(17)(b), Fla. Stat.

disregarding the opinions of Guzman's expert witnesses, the undersigned bases the findings on valuation that follow upon their unchallenged testimony.

15. Guzman is requesting—and her expert witnesses opined that—the Medicaid lien should be adjusted according to a method that will be referred to herein as a "proportional reduction." A proportional reduction adjusts the lien so that the Agency's recovery is discounted in the same measure as the plaintiff's recovery. In other words, if the plaintiff recovered 25% of the "true value" of his damages, then, under a proportional reduction, the Medicaid lien is adjusted so that the Agency recovers 25% of the plaintiff's recovered past medical damages.

16. The mathematical operation behind a proportional reduction is simple and requires no expertise. Using "***r***" to signify the plaintiff's recovery; "***v***" to represent the "value" of his damages; "***m***" for past medical expenses; and "***x***" as the variable for the adjusted lien amount, the equation is: $(\boldsymbol{r} \div \boldsymbol{v}) \times \boldsymbol{m} = \boldsymbol{x}$. In these cases, the only unknown number (usually) is ***v***, i.e., the "value" of the plaintiff's total damages.

17. "True value," sometimes also called "full value" or "total value," is an elusive concept, given that the *true* value of damages which have not been liquidated by a judgment is not, and cannot be, known in a case that settles before the entry of a judgment.

18. The uncontested and unimpeached expert testimony in this case establishes, by any standard of proof, that the "true value" of Sanchez's damages is somewhere between $35 million and $40 million, and is no less than $25 million, which is the most conservative figure presented by Guzman's witnesses, Darryn Silverstein, Esquire; Kenneth Bush, Esquire; and Andrew Stone, Esquire. Thus, the undersigned finds as a matter of ultimate fact that the Total Value is $25 million.

19. It is true that, except for past medical damages, Guzman's expert witnesses did not have terribly precise numbers for Sanchez's economic

damages such as lost wages and future medical expenses. This is immaterial here, however, because Sanchez's noneconomic damages for past and future pain and suffering, mental anguish, loss of capacity for the enjoyment of life, etc., so eclipse the economic damages as to make the latter almost a rounding error. As a practical matter, setting the Total Value at $25 million (instead of, say, $35 million, which the evidence would also support) eliminates any issue regarding the value of Sanchez's economic losses. There is no getting around the fact that the settlement is paltry in relation to Sanchez's total damages, at most reflecting only a few percentage points thereof.

20. Mr. Silverstein testified that because Sanchez recovered only 3.4% of the Total Value of his damages, conservatively appraised, it stands to reason that he recovered only 3.4% of the $809,282.85 in total past medical damages, or more specifically, only 3.4% of the $253,843.04 in benefits that AHCA paid. These numbers are $27,515.62 and $8,630.66, respectively. Mr. Silverstein testified that it would be reasonable to allocate $8,630.66 of the settlement to AHCA's share of the past medical expenses. Mr. Bush, the other expert on allocation methodology, concurred.

21. An allocation of $27,515.62 from the settlement to past medical expenses, pursuant to the proportional reduction methodology, would be consistent with the expert testimony presented in this case (and other Medicaid lien adjustment cases) and supported by the case law.

22. Once Sanchez made a prima facie showing of Total Value by adducing competent substantial evidence thereof, and offered expert testimony regarding the proportional reduction methodology, the Agency might have introduced some evidence that would have given the fact-finder an evidentiary basis for discounting or rejecting the $25 million Total Value figure, or for rejecting the pro-rata allocation method.[3] The Agency, however,

[3] To be clear, the undersigned is not shifting the burden of proof to the Agency. The Agency is not *required* to put on any such evidence. The Agency is free to present no evidence, rely

elected not to present evidence, preferring instead to *argue* that Guzman has failed to prove that the particular medical-expense allocation she advocates should be made, and that, as a result, the default, statutory allocation should be made. As far as the *evidence* goes, therefore, the undersigned has no reasonable basis for rejecting the full value figure of $25 million, which Guzman's witnesses established, via credible and compelling expert opinion, was a conservative appraisal of Sanchez's total damages, or for declining to use the proportional reduction approach.

23. An argument might have been made that instead of using Total Value as the number for the variable ***v*** in the proportional reduction formula, the Claim Value should be used. In this case, competent substantial evidence of a genuine Claim Value was adduced, as underscored by the fact that the Plaintiff left money on the table, agreeing to accept in settlement less than the amount of insurance available to the Defendant. On such grounds, AHCA might have argued that Sanchez recovered the full value of his *claim*, if not the full value of his *damages*, and thus that he recovered 100% of what he could fairly have hoped to obtain, as opposed to 3.4% of everything he might theoretically have won in an alternative universe where he had an airtight case and the Defendant had no defenses and limitless resources. AHCA, however, did not make this argument and, more important, did not present any evidence to support the use of such an allocation methodology.[4]

24. The opinion testimony elicited at hearing, in addition to being

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solely on cross-examination of the petitioner's witnesses to undermine the testimony elicited by the petitioner on direct, and then argue that the petitioner has failed to meet his burden of proof—as the Agency has done in this case. If the Agency takes this approach, however, it loses the opportunity affirmatively to prove that the Total Value is too high, and it risks a finding that the unrebutted evidence of Total Value is a fair reflection of the full value of the petitioner's damages. If, however, the Agency presents evidence of full value, or settlement value, or some alternative value, then the petitioner must rebut the evidence and try to overcome it, for the petitioner bears the ultimate burden of persuasion with regard to establishing the value of the petitioner's damages.

[4] The undersigned, to be clear, is not signaling that he necessarily would have adopted such an approach, but only noting that this is an alternative which he would have taken seriously, had there been evidence in the record to support it.

unchallenged and unimpeached, is otherwise persuasive to the fact-finder and convincingly establishes that the probable "full value" of Sanchez's damages, i.e., ***v*** in the proportional reduction formula, is $25 million. The unchallenged expert testimony convincingly shows, as well, that a proportional reduction methodology appropriately identifies the "portion of the total recovery which should be allocated" in this case as past medical expense damages.

25. Accordingly, the undersigned determines as a matter of ultimate fact that the portion of Sanchez's $850,000.00 recovery that "should be allocated" to past medical expenditures is $27,515.62, or 3.4% of Sanchez's total past medical expenses.

26. A wrinkle here is Guzman's settlement with Sunshine for $18,884.00. The record is silent as to the terms of this settlement, and as to whether Guzman has paid this amount to Sunshine. Also unknown to the undersigned is whether AHCA and Sunshine have an agreement as to whether Sunshine will be allocated $18,884.00 of the lien proceeds.

27. The reason these things matter is that (unless Guzman has agreed otherwise in her settlement with Sunshine) the Medicaid lien should attach only to the $27,515.62 which, the undersigned has found, Sanchez recovered for past medical expenses. That is, $27,515.62 is the amount from which both AHCA and Sunshine must be paid. If Guzman has already paid Sunshine $18,884.00, then she should not be required to pay out more than an additional $8,631.62[5] to satisfy Sanchez's statutory obligation to reimburse Medicaid—unless, that is, she agreed otherwise. If Guzman has not yet paid Sunshine $18,884.00, then (absent an agreement otherwise) she should be required to pay only $27,515.62 to AHCA, which can then allocate to Sunshine whatever amount AHCA owes Sunshine under the contractual arrangements governing such transfer.

[5] This figure is slightly different (+ $0.96) from the number in paragraph 20, *supra*, due to rounding in the calculations. The discrepancy is obviously immaterial.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding, as well as final order authority, pursuant to section 409.910(17)(b).

29. Section 409.910(1) provides as follows:

> 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 repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid. Principles of common law and equity as to assignment, lien, and subrogation are abrogated to the extent necessary to ensure full recovery by Medicaid from third-party resources. It is intended that if the resources of a liable third party become available at any time, the public treasury should not bear the burden of medical assistance to the extent of such resources.

30. Section 409.910(6)(c) provides, in relevant part, as follows:

> The agency is entitled to, and has, an automatic lien for the full amount of medical assistance provided by Medicaid to or on behalf of the recipient for medical care furnished as a result of any covered injury or illness for which a third party is or may be liable, upon the collateral, as defined in s. 409.901[, which includes "[a]ny and all causes of action, suits, claims, counterclaims, and demands that accrue to the recipient or to the recipient's legal representative, related to any covered injury, illness, or necessary medical care, goods, or services that necessitated that Medicaid provide medical assistance."]

31. Section 409.910(11)(f) provides, in pertinent part, as follows:

> 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.

32. Section 409.910(17)(b) provides as follows:

> If federal law limits the agency to reimbursement from the recovered medical expense damages, a recipient, or his or her legal representative, 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. For purposes of chapter 120, the payment of funds to the agency or the placement of the full amount of the third-party benefits in the trust account for the benefit of the agency constitutes final agency action and notice thereof. Final order authority for the proceedings specified in this subsection rests with the Division of Administrative

> Hearings. This procedure is the exclusive method for challenging the amount of third-party benefits payable to the agency. 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.

33. Section 409.910 provides no guidance, instructions, or criteria that the ALJ is required to consider in determining the portion of a recipient's total recovery which "should be allocated" as medical expenses, nor does it prohibit the ALJ from considering any specific criteria or from using any particular methodology. This lack of specific statutory standards limiting the decision-maker's discretion extends to the recipient, as well, who must prove that some amount less than the default allocation "should be allocated" to medical expense damages, without any clear statutory direction as to what must be proved to make the required showing.

34. The U.S. Supreme Court has interpreted the anti-lien provision in federal Medicaid law as imposing a bar which, pursuant to the Supremacy Clause, precludes "a state from asserting a lien on the portions of a settlement not allocated to medical expenses." *See, e.g.*, *Mobley v. State*, 181 So. 3d 1233, 1235 (Fla. 1st DCA 2015).

35. In *Gallardo v. Dudek*, 963 F.3d 1167, 1181-82 (11th Cir. 2020), the U.S. Eleventh Circuit Court of Appeals held that Florida's statutory formula is *not* preempted by federal law. Under *Dudek*, the Medicaid lien may attach to *all* medical expenses recovered, including damages for future care and treatment, and the standard of proof by which the recipient must rebut the formulaic allocation is clear and convincing evidence. *Id.* at 1178-79, 1182.

36. In *Giraldo v. Agency for Health Care Administration*, 248 So. 3d 53, 54 (Fla. 2018), however, the Florida Supreme Court ruled that, under preemptive federal law, the state's Medicaid lien may attach only to that portion of a recipient's settlement recovery attributable to *past* medical expense damages. Thus, the Florida Supreme Court held that section 409.910(17)(b) is invalid and unenforceable to the extent it would allow the Agency to recover from future medical expense damages. As an authoritative decision of the state's highest court, *Giraldo* is binding precedent on all lower courts, which a state ALJ, applying state law, must follow. *See Dudek*, 963 F.3d at 1192-93 ("Florida Medicaid recipients will now head to state administrative court to benefit from the Florida Supreme Court's holding in *Giraldo*.")(Wilson, J., concurring in part and dissenting in part).

37. Florida state courts have not held that the clear and convincing standard of proof as prescribed in section 409.910(17)(b) is preempted or otherwise unenforceable. Guzman has proved her case by clear and convincing evidence, as required by statute.

38. Regarding the methodology for determining that portion of the total recovery which should be allocated to past medical expense damages, recent appellate decisions have moved towards acceptance of the proportional reduction as a valid, albeit nonexclusive, basis for making the required distribution. Indeed, it is probably accurate to say that, under the present state of the law, an ALJ is practically required to accept the use of a proportional reduction, provided certain conditions are met, e.g., where unrebutted expert testimony is received both as to the value of the recipient's damages and as to the use of the pro rata methodology. As the First District Court of Appeal explained:

> [W]hile not established as the only method, the pro rata [or proportional reduction] approach has been accepted in other Florida cases where the Medicaid recipient presents competent, substantial evidence to support the allocation of a smaller portion of a

> settlement for past medical expenses than the portion claimed by AHCA. *See Giraldo v. Agency for Health Care Admin.*, 248 So. 3d 53 (Fla. 2018); *Mojica v. Agency for Health Care Admin.*, 285 So. 3d 393 (Fla. 1st DCA 2019); *Eady v. State*, 279 So. 3d 1249 (Fla. 1st DCA 2019). *But see Willoughby v. Agency for Health Care Administration*, 212 So. 3d 516 (Fla. 2d DCA 2017) (quoting *Smith v. Agency for Health Care Administration*, 24 So. 3d 590, 591 (Fla. 5th DCA 2009)) (explaining that the pro rata formula is not the "required or sanctioned method to determine the medical expense portion of an overall settlement amount").

Ag. for Health Care Admin. v. Rodriguez, 294 So. 3d 441, 444 (Fla. 1st DCA 2020).

39. To the cases cited by the court in *Rodriguez* may be added another recent decision, *Bryan v. Agency for Health Care Administration*, 291 So. 3d 1033 (Fla. 1st DCA 2020). In *Bryan*, the recipient settled a medical malpractice action arising out of a catastrophic brain injury for $3,000,000, and then initiated an administrative proceeding to adjust the Medicaid lien, which the Agency asserted should be payable in the full amount of approximately $380,000. *Bryan*, 291 So. 3d at 1034. At hearing, the recipient "offered the testimony of two trial attorneys who were both admitted as experts in the valuation of damages." *Id*. These witnesses relied upon a life care plan and an economist's report, which were filed as exhibits, as well as jury verdicts in similar cases, to support their opinion that "the value of [the recipient's] damages exceeded $30 million." *Id.*

40. The "experts both testified that, using the conservative figure $30 million, the $3 million settlement only represented a 10% recovery," and that, "based on that figure, it would be reasonable to allocate 10% of [the recipient's approximately $380,000] claim for past medical expenses—[or, approximately $38,000]—from the settlement to settle [the Agency's] lien." *Id*. The recipient also "submitted an affidavit of a former judge," who

affirmed that the proportional allocation was a reasonable, rational, and logical "method of calculating the proposed allocation." *Id*.

41. Regarding the Agency's case, the court wrote:

> In turn, AHCA did not: (1) call any witnesses, (2) present any evidence as to the value of Ms. Bryan's damages, (3) propose a differing valuation of the damages, or (4) present evidence contesting the methodology used to calculate the $38,106.28 allocation to past medical expenses.

Id. at 1035.

42. The ALJ rejected the recipient's proposed proportional reduction methodology as a "'one size fits all' approach which place[s] each element of [the recipient's] damages at an equal value." *Id*. The ALJ determined that it was the recipient's burden to "prove that it was more probable than not" that the parties in the personal injury action had intended to allocate only 10% of the settlement recovery as past medical expenses, and that the recipient had failed to do that. *Id*. Accordingly, the ALJ ordered the recipient to pay the Medicaid lien in full. *Id*.

43. The court reversed the ALJ's order, explaining:

> [I]n this case, [the recipient] presented unrebutted competent substantial evidence to support that the value of her case was at least $30 million. She also presented unrebutted competent substantial evidence that her pro rata methodology did indeed support her conclusion that $38,106.28 was a proper allocation to her past medical expenses. Such methodology was similar to the methodology employed in *Giraldo*, *Eady*, and *Mojica*. [The Agency] did not present any evidence to challenge [the recipient's] valuation, nor did it present any alternative theories or methodologies that would support the calculation of a different allocation amount for past medical expenses. Without any evidence to contradict the pro rata methodology

> proposed by [the recipient], the ALJ's rejection of that methodology was not warranted.

Id.

44. There are many similarities between this case and *Bryan*. Here, as in *Bryan*, two trial attorneys gave unrebutted testimony that, using a conservative (and uncontested) appraisal of the recipient's case ($25 million), the settlement ($850,000.00) represented only a small fraction (3.4%) of the recipient's total damages. They expressed the opinion, as in *Bryan*, that a proportional reduction was the proper method of determining the portion of the recipient's recovery which should be allocated as past medical expenses. As in *Bryan*, the Agency did not present testimony or other evidence as to: (i) the value of the recipient's case; (ii) an alternative appraisal of the recipient's damages; or (iii) the weaknesses, if any, in the proportional reduction methodology as applied to the particular facts.

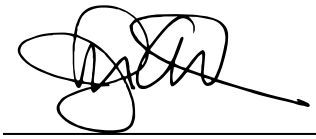
45. The undersigned concludes that *Bryan* is applicable and controlling. Following that court's lead, the undersigned accepts the premise that the proportional reduction methodology, when established, as here, by unrebutted, competent substantial evidence, provides a valid formula for determining the portion of the recipient's recovery which should be allocated as past medical expense damages.

46. Accordingly, as found above, Guzman carried her burden, as a matter of fact, by proving that the portion of Sanchez's total recovery which should be designated as compensation for past medical expenses is $27,515.62.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the amount payable to the Agency for Health Care Administration in satisfaction of the Medicaid lien for medical assistance provided to Sanchez is $27,515.62, subject to the caveats stated in paragraph 27, *supra*.

DONE AND ORDERED this 18th day of May, 2021, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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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 appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the First District Court of Appeal in Leon County, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.