STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WESLEN BASTIEN AS MOTHER AND
NATURAL GUARDIAN OF T.S.J., A MINOR,

Petitioner,

Case No. 21-1115MTR

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

A final hearing was conducted before Robert L. Kilbride, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH"), on May 27, 2021, by video teleconference using Zoom technology.

APPEARANCES

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STATEMENT OF THE ISSUE

What amount of the personal injury settlement recovered by Petitioner, Weslen Bastien as mother and natural guardian of T.S.J., a minor ("T.S.J." or "Petitioner"), must be paid to Respondent, Agency for Health Care Administration ("AHCA" or "Agency"), pursuant to section 409.910, Florida Statutes (2019), to fully satisfy the Agency's Medicaid lien totaling $279,299.76.

PRELIMINARY STATEMENT

On March 23, 2021, T.S.J. filed a Petition to Determine Amount Payable to Satisfy Medicaid Lien, under the provisions of section 409.910(17)(b). The petition disputed the amount of the lien claimed by AHCA and requested a hearing.

The matter was assigned to the undersigned to conduct a formal administrative hearing and render a final order establishing AHCA's lien recovery amount. The matter proceeded to a hearing on May 27, 2021.

Prior to the hearing, the parties filed a Joint Pre-hearing Stipulation that included numerous undisputed facts. At the final hearing, T.S.J.'s Exhibits 1 through 17 were admitted into evidence without objection. T.S.J. presented the testimony of her personal injury lawyer, Robert T. Bergin, Jr., and additional testimony from R. Vinson Barrett, Esquire. The Agency noticed one exhibit, but did not submit it, nor did it call any witnesses.

The Transcript of the final hearing was filed with DOAH on June 18, 2021. Both parties timely submitted proposed final orders. They were carefully reviewed and considered by the undersigned in the preparation of this Final Order.

All references to the Florida Statutes are to the version in effect on the date of the action or conduct involved. Additionally, the parties agree that the 2020 version of the Florida Statutes applies to the operative statute, section 409.910.

FINDINGS OF FACT

The undersigned makes the following findings of fact based on the stipulations of the parties and other evidence presented at the hearing.

PARTIES' STIPULATED FACTS AND LAW

1. Weslen Bastien ("Ms. Bastien") is the mother and natural guardian of T.S.J., a minor.

2. On July 4, 2015, T.S.J. suffered permanent and catastrophic brain damage during her birth. She has been diagnosed with hypoxic-ischemic encephalopathy and resulting cerebral palsy.

3. She cannot ambulate, roll-over, speak more than a few simple words, or perform any of the activities of daily living. She will always be totally dependent on others.

4. In November 2016, Ms. Bastien served the required Notices of Intent to Initiate Medical Malpractice Litigation on the hospital and the delivering obstetrician. That initiated the statutorily mandated 90-day presuit screening period, which concluded in February 2017.

5. At the conclusion of the presuit screening period, the hospital and the obstetrician denied the claim. In addition to denying negligence and causation, they asserted that the Florida Birth-Related Neurological Injury Compensation Plan ("NICA") remedy was exclusive and barred a civil action for T.S.J.'s neurological injuries.

6. On March 8, 2017, Ms. Bastien filed a petition pursuant to section 766.301, Florida Statutes, et seq., with DOAH seeking a determination that the notice requirements of section 766.316 were not met and that the NICA remedy was not exclusive and did not bar a civil action.

7. The final hearing was held before the ALJ on December 19, 2017. The Final Order on Notice was entered on February 16, 2018. The Final Order on Notice acknowledged that the obstetrician did not provide NICA notice to Ms. Bastien on July 4, 2015. However, the parties stipulated, and the ALJ found, that he was excused from providing NICA notice on July 4, 2015, as Ms. Bastien presented in an emergency medical condition due to the onset and persistence of uterine contractions. Therefore, the obstetrician did not waive NICA exclusivity, and a civil action against him is barred.

8. The ALJ found that the hospital did not provide NICA notice to Ms. Bastien in accordance with section 766.316. Therefore, NICA exclusivity does not apply to the hospital, and a civil action against the hospital is not barred.

9. Ms. Bastien brought a medical malpractice lawsuit against the hospital to recover all of T.S.J.'s damages, as well as her individual damages associated with her daughter's injuries.

10. During the pendency of T.S.J.'s medical malpractice action, AHCA was notified of the action, and AHCA, though its authorized agent, Conduent Payment Integrity Solutions, asserted a $279,299.76 Medicaid lien against T.S.J.'s cause of action and settlement of that action. The Medicaid program, through AHCA, spent $279,299.76 on behalf of T.S.J., all of which represents expenditures paid for T.S.J.'s past medical expenses.

11. A non-AHCA Medicaid provider, Prestige Health Choice, provided $30,430.54 in past medical expenses on behalf of T.S.J.

12. Another non-AHCA Medicaid provider, WellCare, provided $58,034.25 in past medical expenses on behalf of T.S.J.

13. Finally, one other non-AHCA provider, Miami Children's Health Plan, provided $8,562.65 in past medical expenses on behalf of T.S.J.

14. Accordingly, a total of $376,327.20 was paid for T.S.J.'s past medical expenses.

15. The medical malpractice case was resolved by way of a confidential settlement.

16. As a condition of T.S.J.'s eligibility for Medicaid, T.S.J. assigned to AHCA her right to recover from liable third-parties medical expenses paid by Medicaid. *See* 42 U.S.C. § 1396a(a)(25)(H) and § 409.910(6)(b), Fla. Stat.

17. Petitioner has agreed to hold the Medicaid lien amount in trust 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).

18. Petitioner and AHCA agree that application of the formula in section 409.910(11)(f) to the $8 million-dollar settlement recovery requires payment to AHCA in the full $279,299.76 amount of the Medicaid lien.

19. Petitioner and AHCA agreed that the 2020 version of section 409.910 controls jurisdiction of DOAH in this case.

20. Petitioner and AHCA agreed that the burden of proof at the hearing for Petitioner in contesting the amount payable to AHCA is clear and convincing evidence. § 409.910(17)(b), Fla. Stat.

21. Petitioner and AHCA agreed that DOAH has jurisdiction under section 409.910(17)(b) to determine the portion of a total recovery which should be allocated as past medical expenses. The parties stipulated that AHCA is limited in the section 409.910(17)(b) procedure to the past medical expense portion of the recovery. *See Giraldo v. Ag. for Health Care Admin.*, 248 So. 3d 53, 56 (Fla. 2018).

EVIDENCE AT HEARING

22. At the final hearing, Petitioner presented the testimony of two witnesses: Robert T. Bergin, Jr., Esquire ("Bergin"), Petitioner's personal injury attorney, and R. Vinson Barrett, Esquire ("Barrett"), an experienced trial lawyer who handles catastrophic personal injury cases.

23. Over AHCA's objections, both Bergin and Barrett were accepted as experts on the valuation of personal injury damages for an individual.

24. Barrett has practiced law since 1977 and is currently a partner with the firm of Barrett, Nonni and Homola. He handles medical malpractice and catastrophic personal injury cases.

25. Barrett stays current with jury verdicts. As part of his work, Barrett routinely assesses the value of damages suffered by injured parties. The valuation of personal injury cases has been a necessary and ongoing part of his practice since 1978.

26. Barrett testified that he has been recognized as an expert in the valuation of catastrophic personal injury cases at DOAH over 30 times.

27. Barrett reviewed all the exhibits in this case. To come to a valuation determination in any given case, he related that he looks at medical records and reports of other experts who have given impairment ratings and other assessment reports. In this case, he reviewed a habitation assessment preliminary report prepared by Susan K. McKenzie, MS.

28. Barrett also reviews life care and continuation of care reports for future medical needs. In this case, he reviewed a report prepared by Dr. Craig H. Lichtblau, and an economist's report regarding the present value of economic damages prepared by Bernard F. Pettingill, Jr., Ph.D.

29. Barrett was tendered as an expert regarding valuation of personal injury damages and resolution of liens in personal injury cases. The Agency objected for lack of foundation. The undersigned found that Petitioner had set forth an adequate basis and predicate, and permitted Barrett to give his opinion as to the valuation of the underlying personal injury claim by Petitioner.

30. Barrett testified that, in his opinion, the total damages suffered by T.S.J. were valued at $40 million. This was based on the fact that T.S.J.'s economic damages were over $27 million. Added to this were her non-economic damages for such things as loss of enjoyment of life and pain and suffering, which he valued at another $25 million.

31. Barrett based his opinion, in part, on several other comparable personal injury cases he studied resulting in damages in the range of $40 million.

32. In comparing the $40 million to the settlement proceeds of $8 million, Barrett concluded that T.S.J. recovered only 20 percent of her total damages. The 20 percent would apply to each element of damages, including past medical expenses.

33. Barrett concluded that if she only recovered 20 percent of her total damages, then likewise only 20 percent of her past medical expenses were recovered in the confidential settlement. As a result, he concluded that AHCA's Medicaid lien should be reduced proportionately to 20 percent of $376,327.20, or $75,265.44.

34. On cross-examination, however, Barrett was unable to clearly or convincingly break down or list out with any specificity the amounts he felt would have been contained in the confidential settlement of $8 million for each type of damage. This included what the damages would have been for economic, non-economic or the past medical expense portions of the confidential settlement.[1]

35. Nonetheless, Barrett's testimony concerning (1) the value of the case and (2) the use of the pro rata or proportionality methodology was not persuasively rebutted or contradicted by AHCA's counsel on cross-examination, or by any other evidence.

36. Bergin is a 44-year practicing attorney, who is a sole practitioner in West Palm Beach, Florida. He testified regarding his representation of T.S.J. and her family.

[1] Regardless, as will be noted herein, this evidence was not essential to the viability or use of the proportionality formula approved in *Eady v. Agency for Health Care Administration*, 279 So. 3d 1249 (Fla. 1st DCA 2019), and subsequent cases.

37. Bergin handles serious/catastrophic medical malpractice injury cases, exclusively for plaintiffs. He specializes in handling complex medical malpractice claims.

38. Bergin was admitted to the Florida Bar in 1977 and began an active trial practice with an insurance defense firm.

39. He maintained a very active medical malpractice defense practice until the mid-1980s. He tried cases involving catastrophic brain injuries to infants and quadriplegics. As defense counsel, he was required to evaluate cases and provide his valuation to the insurance companies so they could set their accounting reserves.

40. Since the mid-1980s, Bergin has exclusively represented plaintiffs in personal injury cases. He primarily handles complex medical malpractice cases. He has been board certified in civil trial law since 1983.

41. In his practice, he has handled cases with personal injuries similar to those suffered by T.S.J.

42. Bergin regularly evaluates the damages suffered by injured people such as T.S.J. He was familiar with T.S.J.'s damages from his representation of T.S.J. in the personal injury lawsuit.

43. Bergin was tendered as an expert regarding the valuation of personal injury damages. The Agency objected on the grounds that there was an insufficient basis to find that Bergin has experience with valuation of damages.

44. Bergin went on to testify, in part, that the valuation of damages was necessary to properly represent a personal injury plaintiff and that he has been evaluating damages on personal injury cases since 1977.

45. After counsel elicited further evidence concerning Bergin's background and experience, AHCA had no further objection to Bergin's additional qualifications. The undersigned allowed Bergin to provide his expert opinion on the valuation of catastrophic personal injury cases, including T.S.J.'s.

46. Bergin testified as to the nature of the litigation on behalf of T.S.J. and the difficult liability issues related to T.S.J. and her injuries.

47. As part of his work-up of this case, he concluded that the full value of the case was $40 million and made an initial demand for that amount. After litigating the case for several years, Bergin negotiated a confidential settlement of $8 million.[2]

48. He testified that at the outset he did a thorough evaluation of the case. He was familiar with the issues, having handled similar cases. The neuroradiology report identified an injury to T.S.J.'s thalamus, which is indicative of an acute near total asphyxia. This was consistent with the difficulties experienced during T.S.J.'s birth.

49. Bergin testified that he also retained damage experts to assist him in determining T.S.J.'s economic losses, reduced to present money value. The economic losses were calculated by his experts to be in excess of $27 million.

50. Bergin testified, without objection, that if the default formula in section 409.910 was used, it would run afoul of the Federal anti-lien law. He also testified that the pro rata (proportionality) methodology was an approved and appropriate method to determine the amount of damages fairly allocable to past medical expenses in an undifferentiated settlement agreement.

51. Applying the proportionality ratio and methodology, Bergin opinied that T.S.J. recovered 20 percent of her past medical expenses in the confidential settlement and that AHCA's recoverable Medicaid lien should be limited by that percentage as well.

52. On cross-examination by AHCA's counsel, however, Bergin, like Barrett, was unable to clearly or convincingly break down or list out the

[2] It is worth noting that Bergin did not directly opine at hearing that the total value of the case was $40 million. Rather, he relied upon his initial demand as evidence concerning his opinion of the value.

specific amounts he felt would have been contained in the final settlement of $8 million for each type of damage. This included what the breakdown of damages would have been for economic, non-economic, or the past medical expense portion of the confidential settlement.

53. Nonetheless, Bergin's testimony concerning the value of the case and the use of the proportionality methodology and resulting allocation was not persuasively rebutted or contradicted by AHCA's counsel on cross-examination or by any other evidence offered by AHCA.

54. Both witnesses reviewed adequate portions of T.S.J.'s medical information and other information before offering their opinions regarding the amount fairly allocable to past medical expenses in the settlement.

55. AHCA did not offer any evidence to rebut the credentials or testimony of Bergin or Barrett regarding the total value of T.S.J.'s claim, or the proportionality methodology they proposed to reduce AHCA's lien.

56. Likewise, AHCA did not offer any alternative expert opinions on the damage valuation or allocation method proposed by Bergin or Barrett.

57. The undersigned finds that Petitioner has established by clear and convincing evidence that the $8 million-dollar recovery is 20 percent of the total value of Petitioner's damages totaling $40 million.

58. Using that same 20 percent and applying the current proportionality methodology approved by the First District Court of Appeal in *Eady*, Petitioner has established that 20 percent of $376,327.20, or $75,265.44, is the amount of the confidential settlement fairly allocable to past medical expenses and is the portion of the Medicaid lien payable to AHCA.

CONCLUSIONS OF LAW

59. AHCA is the state agency responsible for administering Florida's Medicaid program. § 409.910(2), Fla. Stat.

60. DOAH has jurisdiction of this proceeding pursuant to section 409.910(17)(b) and is required to issue a final order.

61. The parties acknowledged that Petitioner bears the burden of proof, by clear and convincing evidence, to show that the amount payable to AHCA in satisfaction of its Medicaid lien is less than the $279,299.76 it would be due if the formula in section 409.910(11)(f) was utilized in this proceeding. *Gallardo v. Dudek*, 963 F.3d 1167, 1182 (11th Cir. 2020)(burden of proof is on the party disputing the amount to be paid in satisfaction of a Medicaid lien, by clear and convincing evidence).

62. "Medicaid is a cooperative federal-state welfare program providing medical assistance to needy people." *Roberts v. Albertson's Inc.*, 119 So. 3d 457, 458 (Fla. 4th DCA 2012). Although state participation in this federal program is voluntary, once a state elects to participate, it must comply with the federal Medicaid law. *Id.*

63. Federal law requires that participating states seek reimbursement for medical expenses incurred on behalf of Medicaid recipients who later recover from legally liable third parties.

64. Under the United States Supreme Court's reasoning in *Arkansas Department of Health and Human Services v. Ahlborn*, 547 U.S. 268 (2006), the federal Medicaid anti-lien provision at 42 U.S.C. § 1396p(a)(1) prohibits a Medicaid lien on any proceeds from a Medicaid recipient's tort settlement.

65. However, the provisions requiring states to seek reimbursement of their Medicaid expenditures from liable third parties also create an express exception to the anti-lien law authorizing states to seek reimbursement from the medical expense portion of the recipient's tort recovery.

66. As noted, the Federal Medicaid Act limits a state's recovery to certain portions of the settlement funds received by the Medicaid recipient. In Florida, this has been interpreted by the Florida Supreme Court to be the amount in a personal injury settlement which is fairly allocable to past (not future) medical expenses. *Giraldo*, 248 So. 3d at 56.

67. In this case, T.S.J. settled her personal injury claim against a third party who was liable to her for the injuries related to AHCA's Medicaid lien.

Therefore, with certain restrictions, AHCA's lien may be enforced against T.S.J.'s tort settlement.

68. The underlying question in this case is: how much is AHCA entitled to recover from Petitioner for the medical payments it provided to T.S.J.?

69. Section 409.910(11) establishes a formula to determine the amount that AHCA may recover for medical assistance benefits it paid for the injured party, from a judgment, award, or settlement the injured party receives from a third party. Section 409.910(11)(f) states, in pertinent part:

> 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.

70. In substance, section 409.910(11)(f) provides that the Agency's recovery for a Medicaid lien is the lesser of: (1) its full lien; or (2) one-half of the total award, after deducting attorney's fees of 25 percent of the recovery and taxable costs, not to exceed the total amount actually paid by Medicaid on the recipient's behalf. *See Ag. for Health Care Admin. v. Riley*, 119 So. 3d 514 (Fla. 2d DCA 2013).

71. In this case, the parties agreed that application of the default formula outlined above, to T.S.J.'s settlement, would require payment to AHCA of $279,299.76.

72. However, another corresponding section, 409.910(17)(b), set forth below, provides a procedure by which a Medicaid recipient may challenge the amount AHCA seeks under the default formula. That process was utilized by T.S.J. in this case.

73. More particularly, following the United States Supreme Court's decision in *Wos v. E.M.A.*, 568 U.S. 627, 633 (2013), the Florida Legislature created an administrative process to challenge and determine what portion of a judgment, award, or settlement in a tort action is properly allocable to medical expenses. This establishes what portion of a petitioner's settlement may be recovered by AHCA to reimburse it for its Medicaid lien. Section 409.910(17)(b) states:

> 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. 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 payable to the agency, the recipient must prove, by clear and convincing evidence, that a lesser portion of the total recovery should be allocated as reimbursement for past and future medical expenses than the amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f) or that Medicaid provided a lesser amount of medical assistance than that asserted by the agency.

74. In short, if Petitioner can demonstrate by clear and convincing evidence that the portion of her confidential settlement fairly allocable as payment for past medical expenses is less than the amount the agency seeks, then the amount Petitioner is obligated to pay to AHCA on its lien is reduced.

75. The First District Court of Appeal, in *Eady,* addressed the uncertainty which had existed regarding what level of proof is adequate to meet this burden. The holding and instructions in *Eady* have been consistently and uniformly applied by the First District Court of Appeal since then.

76. *Eady* concluded, essentially, that a Medicaid recipient was entitled to use the proportionality methodology to determine what amount of an undifferentiated settlement agreement should be fairly allocable to his or her past medical expenses.[3]

[3] Under that method, the total value of the case, generally established by competent experts, is compared against the settlement amount resulting in a ratio or percentage of recovery. The amount of the outstanding Medicaid lien is multiplied by the resulting percentage to determine the reduced lien amount.

77. If this evidence is not sufficiently rebutted or contradicted by the Agency, the amount calculated under the proportionality test is accepted as an appropriate and fair allocation, and AHCA's lien is reduced accordingly. *Eady*, 279 So. 3d at 1259.

78. Since *Eady*, Florida's First District Court of Appeal has consistently held that where a Medicaid recipient presents uncontradicted evidence to show that the pro rata allocation method supports a reduction of the Medicaid lien calculated by the Agency under section 409.910(11)(f), it is reversible error for an ALJ to reject the use of such methodology, unless there is a reasonable basis in the record to do so. *See, e.g., Bryan v. Ag. for Health Care Admin.*, 291 So. 3d 1033, 1036 (Fla. 1st DCA 2020); *Mojica v. Ag. for Health Care Admin.*, 285 So. 3d 393, 398 (Fla. 1st DCA 2019); *Larrigui-Negron v. Ag. for Health Care Admin.*, 280 So. 3d 550 (Fla. 1st DCA 2019); *Soto v. Ag. for Health Care Admin.*, 313 So. 3d 143 (Fla. 1st DCA 2020); and *Domingo v. Ag. for Health Care Admin.*, 313 So. 3d 144 (Fla. 1st DCA 2020).

79. In this case, there was no persuasive evidence presented by AHCA to rebut or contradict the valuation of the case established by Petitioner's experts or the amount of $75,265.44 presented by Petitioner's experts as the fair allocation of past medical expenses in Petitioner's confidential settlement.

80. Counsel for AHCA cross-examined Petitioner's experts but elicited no compelling information or persuasive evidence to assail their opinions as to the value of the case or their opinion that a fair allocation of past medical expenses recovered in Petitioner's confidential settlement was $75,265.44.

81. In short, Petitioner's expert testimony concerning a fair allocation of the settlement agreement was unchallenged by AHCA, without any contrary facts or evidence in the record.

82. Contrary to AHCA's argument in its Proposed Final Order, there is nothing in *Eady* to suggest that the amount calculated under the pro rata methodology is only credible or appropriate to use if the experts can "break

down" or testify concerning the amounts of each type of damage contained in the confidential settlement.

83. Aside from the fact that there was no "break down" to review in the "confidential" settlement, requiring this additional level of proof to support the proportionality methodology appears to run contrary to the comments and concerns expressed by the court in *Eady*. Judge Jay aptly outlined these concerns for the court as follows:

> When the Medicaid recipient settles with the tortfeasor or tortfeasors and the settlement, similar to the present one, does not include itemized allocations for damages, proving what portion of the settlement was allocated to past medical expenses is challenging. *Wos*, 568 U.S. at 634, 133 S. Ct. 1391. Even if the damages represented in the settlement proceeds have been allocated by the parties, there is always the distinct possibility "that Medicaid beneficiaries and tortfeasors might collaborate to allocate an artificially low portion of a settlement to medical expenses." *Id.*; *see also Ahlborn*, 547 U.S. at 288, 126 S. Ct. 1752 (expressing the Supreme Court's concern over "the risk that parties to a tort suit will allocate away the State's interest."). Further complicating matters is when the settlement agreements are confidential, like the ones in the instant case. Revealing the terms of the agreements in this latter instance risks piercing any number of privileges and, potentially, opens a pandora's box of possible sanctions against the parties and their attorneys. The answer to this dilemma has been for Medicaid recipients to utilize a pro rata allocation methodology, which has been met with decidedly mixed reviews.

279 So. 3d at 1256.

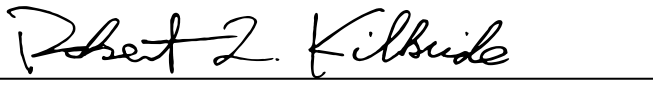
84. Further, there was no proof that Petitioner's experts were privy to any itemization or breakdown of damages, nor was there any evidence that such amounts were outlined in the confidential settlement.

85. In summary, based on the evidence and record in this case, the undersigned is required to apply *Eady*, *Larrigui-Negron*, *Soto, Domingo*, and *Mojica*. It is concluded, therefore, that 20 percent of $376,327.20, or $75,265.44, is the amount due to AHCA. [4]

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Agency for Health Care Administration is entitled to recover $75,265.44 from the amount recovered in Petitioner's personal injury matter to satisfy its Medicaid lien.

DONE AND ORDERED this 7th day of July, 2021, in Tallahassee, Leon County, Florida.



ROBERT L. KILBRIDE
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of July, 2021.

[4] While the undersigned has expressed serious reservations about the propriety and use of the pro rata methodology, the undersigned is obliged to follow *Eady,* and those concerns must be left to another day. *See generally Tya-Marie Savain v. Ag. for Health Care Admin.*, Case No. 17-5946MTR (Fla. DOAH Feb. 26, 2018).

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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.