STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KANESHA HARLEY,

Petitioner,

vs. Case No. 21-1293MTR

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

Pursuant to notice, Administrative Law Judge (ALJ) Robert J. Telfer III conducted a final hearing on May 20, 2021, using the Zoom web-conference platform, pursuant to sections 120.569 and 120.57(1), Florida Statutes.

APPEARANCES

For Petitioner: Michael Bross, Esquire
Michael Bross & Bryan Savy, PLLC
Suite 1
997 South Wickham Road
Melbourne, Florida 32904

For Respondent: Alexander R. Boler, Esquire
Suite 300
2073 Summit Lake Drive
Tallahassee, Florida 32317

STATEMENT OF THE ISSUE

The issue for the undersigned to determine is the amount payable to Respondent, Agency for Health Care Administration (AHCA), as reimbursement for medical expenses paid on behalf of Petitioner Kanesha Harley (Ms. Harley), pursuant to section 409.910, Florida Statutes (2019), from settlement proceeds Petitioner received from third parties.

PRELIMINARY STATEMENT

On March 23, 2021, Petitioner filed a Petition to Reduce Medicaid Lien or for Equitable Distribution. The Petition challenged AHCA's placement of a Medicaid lien in the amount of $123,931.54 on Petitioner's $370,000.00 in settlement proceeds from third parties.

The undersigned set this matter for a final hearing, by video conference, on May 20, 2021. The parties filed their Joint Pre-hearing Stipulation on May 17, 2021, which contained a statement of admitted and stipulated facts for which no further proof would be necessary. The undersigned has incorporated those stipulated facts into the Findings of Fact below, to the extent necessary.

The final hearing commenced on May 20, 2021. Petitioner presented the testimony of Ms. Harley, and Gary Holland, Esquire, Petitioner's expert on personal injury damages. The undersigned admitted into evidence Petitioner's Exhibits P1 through P9, which includes Exhibits P6a and P6b. Respondent presented no witnesses and offered no exhibits at the final hearing.

The parties did not order a transcript of the final hearing. Respondent timely submitted its Proposed Final Order on June 1, 2021, which the undersigned has considered in the preparation of this Final Order. Petitioner submitted its Proposed Final Order on June 2, 2021, which was a day late, but the undersigned, finding no prejudice or advantage to either party, has considered it in the preparation of this Final Order.

All references are to the 2019 codification of the Florida Statutes, unless otherwise indicated.

FINDINGS OF FACT

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

2. In October 2013, Ms. Harley, then 19 years old, was struck by a bullet while on the property of liable third parties (the Underlying Defendants).

3. Ms. Harley testified that the shooting occurred when she was at a restaurant, which was connected to another business, with friends. While outside the restaurant to retrieve her wallet, two persons unknown to Ms. Harley began shooting at each other in the parking lot area. Ms. Harley initially avoided these shots, but after an employee of the restaurant announced that it was ok to go back outside, she was struck by a bullet.

4. Ms. Harley received medical care as a result of her injuries, which included a diagnosis of being an incomplete paraplegic (meaning, among other things, that Ms. Harley is unable to walk and cannot feel the bottom of her legs). Ms. Harley underwent a prolonged hospitalization, is currently unable to work, and expects a lifetime of partial paralysis.

5. Prior to her injury, Ms. Harley had completed the tenth grade, and had a part-time job earning minimum wage. Since her injury, Ms. Harley has been unable to work. She is partially paralyzed from the waist down, and relies on friends and family members for assistance.

6. Ms. Harley's medical care related to her injury was paid by Medicaid, and AHCA through the Medicaid program provided $123,931.54. Another Medicaid entity, Equian, paid Ms. Harley $15,648.50 on her behalf as well. The undersigned finds that Ms. Harley's past medical expenses total $139,580.04 (and notes that this figure is more than the lien amount claimed in the Petition).

7. Petitioner filed a lawsuit against the Underlying Defendants, alleging negligent security and premises liability.

8. During the pendency of Petitioner's lawsuit, AHCA's authorized agent, in a letter dated January 26, 2020, stated that "our office calculated

Medicaid's current and final lien in the amount of $123,931.54. Accordingly, payment of $123,931.54 will satisfy our lien."

9. More than seven years after Ms. Harley's injury, Petitioner and the Underlying Defendants settled the lawsuit for a total of $370,000.00.[1]

10. A "Letter of Understanding" authored by Petitioner's counsel, that he provided to the Underlying Defendants, states, in pertinent part:

> A[s] you know, we represent KANESHA HARLEY, in regards to the above referenced accident and this letter of understanding is to outline that the Plaintiff has allocated 5% of the total settlement of $370,000 or $18,500 of the total settlement amount for Kanesha Harley's past medical bills, for any and all purposes, including Florida Medicaid liens and other liens.
>
> The basis for this reduction is simple equity. Ms. Harley, then 19, was diagnosed as an incomplete paraplegic after the subject incident in October of 2013. The Plaintiff filed suit against [the Underlying Defendants] and was able to obtain a total settlement of $370,000.00, which took into account the serious liability issues under Florida premises liability, negligent security standards. These facts, along with difficulty in prosecuting the case under COVID-19, other technical difficulties, the fact that the case is almost 8 years old, and the unknown affect [sic] COVID-19 may have on a jury is potentially fatal to Plaintiff's cause of action, made this a fair and reasonable settlement, and makes this allocation necessary.

11. In addition to the "Letter of Understanding," Petitioner introduced two documents entitled draft closing statements, that reflect the total amount of the settlement, the amount of attorney's fees ($148,000) and costs

[1] Petitioner's settlement with the Underlying Defendants requires that the identities of the Underlying Defendants remain confidential. Accordingly, the undersigned has not revealed their identities in this Final Order, and notes that Exhibits P1, P5, P6a, P6b, and P7—all of which reference the identities of the Underlying Defendants—shall remain confidential.

($21,434.33) incurred by Petitioner, the amount of a litigation loan incurred by Petitioner, and the amount of the Medicaid lien (in one copy, it contains the reduced amount requested by Petitioner, in the other, it contains no reduction of the lien). Other than these documents, Petitioner introduced no evidence as to how the parties allocated the settlement of the litigation with the Underlying Defendants.

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

13. Application of the formula set forth in section 409.910(11)(f) to Petitioner's $370,000.00 settlement authorizes payment to AHCA of $128,032.84. The undersigned arrives at this calculation as follows:

Settlement Amount	$370,000.00
Attorneys' Fees (capped at 25% pursuant to section 409.910(11)(f)3.	$92,500.00
Taxable Costs	$21,434.44
Remaining Recovery	$256,065.67
Amount Recoverable (pursuant to section 409.910(11)(f)1., "one-half of the remaining recovery shall be paid to [AHCA] up to the total amount of medical assistance provided by Medicaid.")	**$128.032.84** (this amount is one-half of the remaining recovery, which is lower than the Medicaid lien or total past medical expenses)

Expert Witness Testimony of Mr. Holland

14. Petitioner presented the testimony of Mr. Holland, a trial attorney who has handled in excess of 1,000 personal injury cases in the county, circuit, and federal courts of Florida. Mr. Holland has conducted numerous jury trials and has also resolved cases in mediation and arbitration.

15. Petitioner moved, and the undersigned accepted, Mr. Holland as an expert in personal injury litigation. AHCA did not oppose Mr. Holland's designation as an expert.

16. Mr. Holland testified that he is familiar with the type of injury that Ms. Harley suffered. He is also familiar with the legal standards for premises liability and negligent security, and stated that he was familiar with judgments that include monetary awards "due to the actions of others."

17. Mr. Holland stated that there were various liability issues in Petitioner's lawsuit. He testified that it is difficult to prove that a landowner knew of a dangerous condition, or that a landowner could anticipate a shooting, which is an intentional act. Mr. Holland opined that Petitioner had numerous challenges in holding either of the Underlying Defendants liable because it would be difficult to convince a jury that the cause of her injury was foreseeable.

18. Mr. Holland opined, based on his experience, that an estimate of the overall value of the damages to Petitioner was in the $15 to $20 million range. Neither Petitioner nor Mr. Holland offered any evidence of similar jury verdicts or settlements to substantiate this opinion; rather, Mr. Holland's opinion was based on his experience to arrive at this estimate.

19. Mr. Holland further opined that allocating 5% of the settlement—which is $18,500.00—to Petitioner's past medical expenses was a "reasonable allocation." Mr. Holland's opinion on the allocation of 5% of the settlement of Petitioner's lawsuit to her past medical expenses was not based on the typical calculation of comparing the value of the damages in the lawsuit (which are often based on comparison to actual, similar verdicts or settlements) to the actual recovery in the settlement, and deriving a ratio or percentage from that calculation that could be used to reduce the amount of the Medicaid lien (the pro rata allocation methodology).[2]

20. In fact, Petitioner's request to reduce the Medicaid lien, which Mr. Holland supported, is not based on the pro rata allocation methodology, but rather, based on Petitioner's "Letter of Understanding," which designated

[2] *See, e.g., Eady v. Ag. for Health Care Admin.*, 279 So. 3d 1249 (Fla. 1st DCA 2019) (explaining the pro rata allocation methodology).

5% of the entire settlement proceeds as an appropriate amount to satisfy the Medicaid lien, based on "simple equity."

21. On cross-examination, Mr. Holland stated that his opinion of $15 to $20 million in damages was not broken down by any specific category, but stated that Petitioner's loss of wages over the course of her life, given her relatively long-life expectancy, as well as pain and suffering, loss of enjoyment of life, and possible loss of consortium claims, led him to his opinion. He further stated that based on his experience with this type of lawsuit, but where liability is clear, he would not recommend that a client accept less than $10 million in settlement.

22. When asked on cross-examination specifically concerning the allocation of 5% of the settlement of Petitioner's lawsuit to her past medical expenses, Mr. Holland stated that he had no personal knowledge of the parties' decision to designate this percentage, but relied on the "Letter of Understanding" authored by Petitioner's counsel, which he admitted relied on "equity." However, Mr. Holland additionally opined that he was comfortable allocating 95% of the settlement to Petitioner's noneconomic damages, as well as her work life expectancy earning minimum wage, although he admitted that he had not computed any of these figures.

Ultimate Findings of Fact

23. The undersigned finds that the opinion of Mr. Holland concerning the value of Petitioner's lawsuit, which, after cross-examination, he admitted was $10 million, was not based upon sufficient facts or data, such as a comparison to actual similar verdicts or settlements of these types of lawsuit, but rather his personal estimate based on his experience. *See* § 90.702(1), Fla. Stat. (requiring that an expert, *inter alia,* base his or her opinion "upon sufficient facts or data."). Further, Mr. Holland did not break down the basis for his valuation of the lawsuit into specific categories of damages and expenses (*i.e.,* future medical expenses, pain and suffering, lost earning capacity, etc.), but

opined that he considered many of these categories in arriving at his valuation of Petitioner's lawsuit. Although Mr. Holland credibly testified concerning his considerable experience as a personal injury attorney, the undersigned cannot credit his opinion concerning the valuation of Petitioner's damages.

24. However, Mr. Holland's opinion concerning the value of Petitioner's lawsuit appears irrelevant to Petitioner's theory of recovery. The undersigned finds that Petitioner did not, in any way, attempt to establish that the undersigned should reduce her Medicaid lien pursuant to the pro rata allocation methodology, which has been approved in numerous proceedings before the Division of Administrative Hearings (DOAH), as well as Florida's appellate courts, as a reasonable, fair, and accurate methodology that is consistent with *Arkansas Department of Health and Human Services v. Ahlborn,* 547 U.S. 268 (2006), for allocating the settlement proceeds when the underlying third-party action is settled for less than the full value of the case.

25. Rather, Petitioner asks the undersigned to approve a 5% allocation of her entire settlement proceeds to satisfy her Medicaid lien, based on a "Letter of Understanding" between Petitioner and the Underlying Defendants, that states "[t]he basis for this reduction is simple equity[,]" and Mr. Holland's testimony that relied on this "Letter of Understanding," as well as his unsupported calculation that he would allocate 95% of the settlement proceeds to Petitioner's noneconomic damages and lost earning capacity. Section 409.910(1) explicitly abrogates the application of principles of equity in this proceeding; further, DOAH is not a "court of equity." The undersigned finds no basis, in fact or law, for such a reduction.

26. The undersigned finds that Petitioner failed to establish, by either clear and convincing evidence, or a preponderance of the evidence, support for Petitioner's allocation of 5% of the settlement proceeds ($18,500.00) to Petitioner's past medical expenses as a basis for reducing the Medicaid lien.

27. Accordingly, AHCA is entitled to payment of $128.032.84, pursuant to the formula set forth in section 409.910(11)(f).

CONCLUSIONS OF LAW

28. DOAH has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.57(1) and 409.910(17). *Giraldo v. Ag. for Health Care Admin.*, 248 So. 3d 53 (Fla. 2018).

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

30. Section 409.910(17)(b) states that Petitioner's burden of proof to challenge the statutory lien is the clear and convincing evidence standard. Previously, a federal injunction barred AHCA from requiring the clear and convincing standard, but the Eleventh Circuit recently reversed that injunction. *See Gallardo v. Dudek,* 963 F.3d 1167 (11th Cir. 2020). Prior to the Eleventh Circuit's decision, parties in these proceedings traveled under the preponderance of the evidence standard prescribed under section 120.57(1)(j), and Florida appellate courts applied this standard as well. To date, no Florida appellate court has applied the clear and convincing evidence standard in a proceeding such as this. The Florida Supreme Court has held that "[g]enerally, state courts are not required to follow the decisions of intermediate federal appellate courts on questions of federal law." *Carnival Corp. v. Carlisle,* 953 So. 2d 461, 465 (Fla. 2007). The undersigned has considered this matter under both the preponderance of the evidence and clear and convincing evidence standards.

31. A preponderance of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not tends to prove a certain proposition." *S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 871 (Fla. 2014).

32. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a

reasonable doubt.'" *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). The Florida Supreme Court further enunciated the standard:

> This intermediate level of proof entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.
>
> Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). "Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." *Westinghouse Elec. Corp. v. Shuler Bros.*, 590 So. 2d 989 (Fla. 1st DCA 1991).

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

34. The federal Medicaid program requires every participating state to implement a third-party liability provision that authorizes a state to seek reimbursement for Medicaid expenditures from third parties when those resources become available. *See* 42 U.S.C. § 1396a(a)(25); § 409.910(4), Fla. Stat.; *Giraldo,* 248 So. 3d at 55. To accomplish this, section 409.910(6)

establishes that AHCA is automatically assigned any rights a Medicaid recipient has to third-party benefits. Section 409.910(1) states, in part:

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

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

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

> (f) Notwithstanding any provision in this section to the contrary, in the event of an action in tort against a third party in which the recipient or his or her legal representative is a party which results in a judgment, award, or settlement from a third party, the amount recovered shall be distributed as follows:
>
> 1. After attorney's fees and taxable costs as defined by the Florida Rules of Civil Procedure, one-half of

> the remaining recovery shall be paid to the agency up to the total amount of medical assistance provided by Medicaid.
>
> 2. The remaining amount of the recovery shall be paid to the recipient.
>
> 3. For purposes of calculating the agency's recovery of medical assistance benefits paid, the fee for services of an attorney retained by the recipient or his or her legal representative shall be calculated at 25 percent of the judgment, award, or settlement.
>
> 4. Notwithstanding any provision of this section to the contrary, the agency shall be entitled to all medical coverage benefits up to the total amount of medical assistance provided by Medicaid. For purposes of this paragraph, "medical coverage" means any benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under coverage for workers' compensation, personal injury protection, and casualty.

37. In the instant matter, applying the formula set forth in section 409.910(11)(f), to the $370,000.00 settlement, results in AHCA being owed $128,032.84 to satisfy the Medicaid lien. Petitioner, however, asserts that a lesser amount is owed.

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

> A recipient may contest the amount designated as recovered medical expense damages payable to the agency pursuant to the formula specified in

> paragraph 11(f) by filing a petition under chapter 120 within 21 days after the date of payment of funds to the agency or after the date of placing the full amount of the third-party benefits in the trust account for the benefit of the agency pursuant to paragraph (a). The petition shall be filed with the Division of Administrative Hearings…. In order to successfully challenge the amount designated as recovered medical expenses, the recipient must prove, by clear and convincing evidence, that the portion of the total recovery which should be allocated as past and future medical expense 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.

39. The formula set forth in section 409.910(11)(f) provides an initial determination of AHCA's recovery for past medical expenses paid on a Medicaid recipient's behalf, and section 409.910(17)(b) sets forth an administrative procedure for adversarial challenge to that recovery. "[W]hen AHCA has not participated in or approved a settlement, the administrative procedure created by section 409.910(17)(b), serves as a means for determining whether a lesser portion of the total recovery should be allocated as reimbursement for medical expenses in lieu of the amount calculated by application of the formula in section 409.910(11)(f)." *Eady v. Ag. for Health Care Admin.*, 279 So. 3d 1249, 1255 (Fla. 1st DCA 2019) (quoting *Delgado v. Ag. for Health Care Admin.*, 237 So. 2d 432, 435 (Fla. 1st DCA 2018)). To successfully challenge the amount payable to AHCA, the Medicaid recipient must prove that a lesser portion of the total recovered should be allocated as reimbursement for past medical expenses than the amount AHCA has calculated pursuant to section 409.910(11)(f).

40. In *Eady*, the First District determined that utilizing the pro rata allocation methodology for determining the amount of third-party recovery to

be allocated to past medical expenses was appropriate and required under the circumstances. *Id.* at 1259.

41. Since *Eady,* Florida courts have consistently held that where a Medicaid recipient presents unrebutted competent substantial evidence to show that the pro rata allocation methodology supports a reduction of the Medicaid lien as calculated under the formula in section 409.910(11)(f), it is reversible error for an ALJ to reject the use of such methodology in determining the amount of the Medicaid lien pursuant to section 409.910(17)(b), unless there is a reasonable basis in the evidentiary record for doing so. *See, e.g., Bryan v. Ag. for Health Care Admin.,* 291 So. 2d 1033, 1036 (Fla. 1st DCA 2020); *Mojica v. Ag. for Health Care Admin.,* 285 So. 2d 393, 398 (Fla. 1st DCA 2019); *Larrigui-Negron v. Ag. For Health Care Admin.*, 280 So. 3d 550 (Fla. 1st DCA 2019).

42. The pro rata allocation methodology has also been consistently applied in Medicaid third-party reimbursement challenges brought at DOAH under section 409.910(17)(b), to reduce the amount of AHCA's Medicaid lien. *See, e.g., Armando R. Payas, as Guardian Ad Litem for E.R., a Minor, Jennett Camacho, Individually and on Behalf of E.R., a Minor v. Ag. for Health Care Admin.*, Case No. 21-0442MTR (Fla. DOAH June 1, 2021); *Shirley McBride, as Personal Representative of the Estate of Robin McBride v. Ag. for Health Care Admin.*, Case No. 20-5259MTR (Fla. DOAH Mar. 9, 2021); *Gregory McElveen, through the Personal Representative of his Estate, Daniel Hallup v. Ag. for Health Care Admin.*, Case No. 20-4223MTR (Fla. DOAH Feb. 2, 2021); *Misty Mobley and Tavarius Sanders, Individually and on Behalf of Tavarion Sanders, a Minor v. Ag. for Health Care Admin.*, Case No. 20-4033MTR (Fla. DOAH Dec. 21, 2020); *Michael Miller v. Ag. for Health Care Admin.*, Case No. 20-3511MTR (Fla. DOAH Oct. 19, 2020); *Mary Bishop, by and through Guardian Nicole Milstead v. Ag. for Health Care Admin.*, Case No. 20-1526MTR (Fla. DOAH Sep. 23, 2020); *Amy Lopez, Individually and as Parent and Natural Guardian of A.F., a Minor v. Ag. for Health Care Admin.*, Case

No. 20-2124MTR (Fla. DOAH Sep. 3, 2020); *Valeria Alcala, a Minor, by Yobany E. Rodriguez-Camacho and Manuel E. Alcala, as Natural Guardians and Next Friends v. Ag. for Health Care Admin.*, Case No. 20-0605MTR (Fla. DOAH Aug. 18, 2020).

43. Petitioner has not elected to pursue the pro rata allocation methodology utilized by *Eady* and recent DOAH orders in this proceeding. Rather, Petitioner requests that the undersigned allocate 5% of the total settlement of her underlying lawsuit towards past medical expenses, and reduce the Medicaid Lien to that amount, which is $18,500.00.

44. The undersigned concludes that there is no competent, substantial evidence to establish Petitioner's alternative methodology for reducing the Medicaid lien. The "Letter of Understanding" upon which the requested 5% reduction is based states that the basis for doing so "is simple equity[,]" which the undersigned is precluded from applying in this proceeding. *See* § 409.910(1)(f), Fla. Stat. And Mr. Holland's testimony, which was not based on sufficient facts or data, and which was not specific as to categories of damages and to a basis for the 5% allocation, also failed to provide competent, substantial evidence for the requested reduction.

45. As explained in *Smith v. Agency for Health Care Administration*, 24 So. 3d 590 (Fla. 5th DCA 2009), evidence of all medical expenses must be presented, as AHCA may recover from the entirety of the medical expense portion—not just the portion that represents its lien. Further, section 409.910(17)(b) grants the undersigned the power to find "the portion of the total recovery which should be allocated as past … medical expenses," and to limit AHCA to that amount. The statute does not authorize a reduction of the Medicaid lien to the Medicaid-only portion of a recipient's recovery. *See also Garcia v. Ag. for Health Care Admin.*, Case No. 19-2013MTR, FO at 10 (Fla. DOAH Aug. 27, 2019)(considering the full amount of all medical expenses in making a determination on past medical expenses). Accordingly, the undersigned concludes that Petitioner's past medical

expenses consist of the amounts provided by Medicaid ($123,931.54) and Equian ($15,648.50), totaling $139,580.04.

46. Having failed to establish, by either a preponderance of the evidence or by clear and convincing evidence, that a 5% allocation of the settlement proceeds of the underlying lawsuit is an appropriate reduction of Petitioner's Medicaid lien, the undersigned concludes that AHCA is entitled to payment of $128,032.84, pursuant to the formula set forth in section 409.910(11)(f).

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 payment of $128,032.84 from Petitioner's third-party settlement proceeds in satisfaction of its Medicaid lien.

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

ROBERT J. TELFER III
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of June, 2021.

COPIES FURNISHED:

Michael Bross, Esquire
Michael Bross & Bryan Savy, PLLC
Suite 1
997 South Wickham Road
Melbourne, Florida 32904

Shena L. Grantham, Esquire
Agency for Healthcare Administration
Building 3, Room 3407B
2727 Mahan Drive
Tallahassee, Florida 32308

Alexander R. Boler, Esquire
Suite 300
2073 Summit Lake Drive
Tallahassee, Florida 32317

Simone Marstiller, Secretary
Agency for Healthcare Administration
Building 3
2727 Mahan Drive
Tallahassee, Florida 32308

Thomas M. Hoeler, Esquire
Agency for Healthcare Administration
Mail Stop 3
2727 Mahan Drive
Tallahassee, Florida 32308

Richard J. Shoop, Agency Clerk
Agency for Healthcare Administration
Mail Stop 3
2727 Mahan Drive
Tallahassee, Florida 32308

James D. Varnado, General Counsel
Agency for Healthcare Administration
Mail Stop 3
2727 Mahan Drive
Tallahassee, Florida 32308

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.