

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

RUSSELL ROBERTS,

Claimant,

vs.

Case No. 21-1329MA

ST. VINCENT'S MEDICAL CENTER, D/B/A  
ASCENSION ST. VINCENT'S RIVERSIDE,

Defendant.

\_\_\_\_\_ /

FINAL ARBITRATION AWARD

The final arbitration hearing in this case was held before W. David Watkins, Chief Arbitrator; Miles McGrane, Arbitrator; and E. Victoria Penny, Arbitrator, on February 7, 2022, with the hearing's conclusion on February 7, 2022, via Zoom Video Conference.

APPEARANCES

For Claimant: Daniel Harwin, Esquire  
Freedland, Harwin, Valori, P.L.  
Suite 2300  
110 Southeast 6th Street  
Fort Lauderdale, Florida 33301

For Respondent: S. William Fuller, Jr., Esquire  
Hall Booth Smith, P.C.  
Suite 400  
200 West Forsyth Street  
Jacksonville, Florida 32202

AWARD

At the conclusion of the arbitration hearing and presentation of all evidence in this proceeding, the following award was agreed to by majority vote<sup>1</sup> of the arbitrators on February 7, 2022, and announced to the parties the same day:

Future Medical and Attendant Care:	\$195,228.00
80% Lost Wages (past)	\$ 44,498.00
80% Lost Wages (future)	\$372,000.00
Non-economic damages for 80 Percent Loss of Capacity to Enjoy Life	
Russell Roberts	\$200,000.00
<b>Total Economic and Non-Economic Damages</b>	<b>\$811,726.00</b>
Attorney's Fees and Costs 15% of Economic and Non-Economic Damages	\$121,758.90
<b>Total Arbitration Award</b>	<b>\$933,484.90</b>

---

<sup>1</sup> Arbitrator Penny dissented from the majority on two issues, both relating to an offset for collateral source payments as provided for by section 766.207(7)(a), Florida Statutes. The Chief Arbitrator ruled that the "Medicare Coverage for Life Care Plan of Russell Roberts" set forth on pages 7 and 8 of Respondent's "Motion to Preclude Recovery of Payments Made or Likely to be Made by Collateral Sources" was not authenticated, was impermissibly vague and imprecise, and did not rise to the level of competent substantial evidence. Accordingly, that information was not admitted in evidence. Secondly, Arbitrator Penny argued that the burden of proof on the issue of offset of collateral source payments should fall to Claimant, not Defendant. Absent a statutory directive otherwise, in administrative proceedings, the party asserting the affirmative of an issue is required to prove that he or she is entitled to the relief sought. *Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831, 833-34 (Fla. 1993); *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

POST ARBITRATION AWARD FEES TO BE PAID BY DEFENDANT

The parties have agreed to pay the arbitrators, other than the Chief Arbitrator, at the rate of \$750 per hour. Arbitrators McGrane and Penny each spent 10.00 hours in preparation and attendance at the hearing, and in deliberations to determine the amount of the award. Accordingly, Defendant shall pay Arbitrators McGrane and Penny the amount of \$7,500.00 each within 14 days from the date of this Award. Defendant shall also pay for the costs of the arbitration proceeding

The panel finds that no evidence was presented as to any past medical expenses of any nature whatsoever, and that no portion of this award reflects payment or reimbursement or consideration of any past medical expenses.

DONE AND ORDERED this 10th day of February, 2022, in Tallahassee, Leon County, Florida.



---

W. DAVID WATKINS  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of February, 2022.

COPIES FURNISHED:

James Brent Allen, Esquire  
Hall Booth Smith, P.C.  
Suite 400  
200 West Forsyth Street  
Jacksonville, Florida 32202

Daniel Harwin, Esquire  
Freedland Harwin Valori, P.L.  
Suite 2300  
110 Southeast 6th Street  
Fort Lauderdale, Florida 33301

Melissa Gunion, Esquire  
Freedland Harwin Valori, P.L.  
Suite 2300  
110 Southeast 6th Street  
Fort Lauderdale, Florida 33301

Thomas E. Dukes, III, Esquire  
McEwan, Martinez & Dukes, P.A.  
108 East Central Boulevard  
Post Office Box 753  
Orlando, Florida 32802

S. William Fuller, Jr., Esquire  
Hall Booth Smith, P.C.  
Suite 400  
200 West Forsyth Street  
Jacksonville, Florida 32202

Brooke Taylor, Esquire  
200 West Forsyth Street  
Jacksonville, Florida 32202

Elisabeth A. Avilla, Esquire  
Hall Booth Smith, PC  
Suite 400  
200 West Forsyth Street  
Jacksonville, Florida 32202

Miles A. McGrane, III, Esquire  
The McGrane Law Firm  
Suite 130 358  
401 East Las Olas Boulevard  
Fort Lauderdale, Florida 33301-2477

E. Victoria Penny, Esquire  
Henry Buchanan, P.A.  
2508 Barrington Circle  
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.