

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CARLOS MORALES,

Petitioner,

vs.

Case No. 21-1836MTR

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

FINAL ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH), conducted the final hearing in this case on September 21, 2021, in Tallahassee, Florida, by Zoom video conference.

APPEARANCES

For Petitioner: Jason Dean Lazarus, Esquire
Special Needs Law Firm
2420 South Lakemont Avenue, Suite 160
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For Respondent: Alexander R. Boler, Esquire
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STATEMENT OF THE ISSUE

What amount of the personal injury claim settlement of Petitioner, Carlos Morales, must be paid to Respondent, Agency for Health Care Administration (Agency), to satisfy the Agency's Medicaid Lien?

PRELIMINARY STATEMENT

On June 11, 2021, Mr. Morales filed a Petition to Determine Medicaid's Lien Amount to Satisfy Claim Against Personal Injury Recovery by the Agency for Health Care Administration. The matter was assigned to the undersigned to conduct a formal administrative hearing and issue a final order. The matter was set for hearing to begin on July 12, 2021. It convened as scheduled. At the parties' request, the hearing was reset and scheduled to resume on September 21, 2021. The hearing was held as scheduled. The parties filed a pre-hearing stipulation that included a statement of admitted and undisputed facts. They are adopted in the Findings of Fact without substantive alteration.

At the final hearing, Mr. Morales presented testimony from David Novack, David Paul, and Jacky Rodriguez. Mr. Morales' Exhibits 1 through 5 were accepted into evidence. The Agency did not present evidence. The Transcript was filed October 6, 2021. The parties timely filed proposed final orders. They have been considered in the preparation of this Final Order.

FINDINGS OF FACT

1. On August 8, 2020, a vehicle left its lane and ran head-on into Mr. Morales. A second vehicle also hit Mr. Morales. Mr. Morales was not responsible for the accident. The accident trapped him in his vehicle and severely injured him.

2. Mr. Morales was transported to Orlando Regional Medical Center by helicopter and treated in the center's trauma unit because of his severe injuries. Mr. Morales' injuries required multiple surgeries, right knee reconstruction, insertion of a right hip rod, and repair of a lacerated spleen. Mr. Morales also received multiple blood transfusions.

3. Mr. Morales received physical therapy after discharge from the hospital. Since then, his injuries, including abnormal neurological issues,

have required continuing medical treatment. The injuries left Mr. Morales permanently disabled.

4. Mr. Morales asserted a personal injury claim against various defendants. Mr. Morales settled his claims in May of 2021, for \$225,000.00.

5. Mr. Morales properly notified the Agency of his personal injury claim and the settlement amount. The Agency paid \$84,508.48 for Mr. Morales' medical care. The Agency asserted a lien against the settlement proceeds for the money it paid for Mr. Morales' Medicaid services.

6. The Agency maintains that it is entitled to application of the formula in section 409.910(11)(f), Florida Statutes (2020),¹ to determine the lien amount. Applying the statute's reduction formula to the \$84,508.48 results in a recoverable lien amount of \$84,206.67.

7. There is no competent persuasive evidence of the total amount of Mr. Morales' medical expenses.

CONCLUSIONS OF LAW

8. Sections 120.569, 120.57(1), and 409.910(17), Florida Statutes, grant DOAH jurisdiction over the subject matter and parties in this case.

9. The Legislature authorized the Agency to administer Florida's Medicaid program. *See* § 409.902, Fla. Stat.

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

11. Federal law requires states to seek reimbursement for medical expenses incurred on behalf of Medicaid recipients who recover from third parties. *See Ark. Dep't of Health & Human Servs. v. Ahlborn*, 547 U.S. 268,

¹ All citations to Florida Statutes are to the 2020 codification.

276 (2006). Florida's Legislature enacted section 409.910 to comply with that requirement. Section 409.910(7) requires the Agency to recover for Medicaid funds paid for a Medicaid recipient's medical care when the recipient later receives a personal injury judgment or settlement from a third party. *Smith v. Ag. for Health Care Admin.*, 24 So. 3d 590 (Fla. 5th DCA 2009). The statute imposes an automatic lien on the proceeds of any judgment or settlement for the medical services provided by Medicaid. § 409.910(6)(c), Fla. Stat.

12. The formula in section 409.910(11)(f) determines the amount the Agency may recover from a judgment, award, or settlement from a third party for Medicaid medical expenses. *Ag. for Health Care Admin. v. Riley*, 119 So. 3d 514, 515 n.3 (Fla. 2d DCA 2013). Section 409.910(17)(b) establishes the right to contest a Medicaid lien before DOAH and provides that section 409.910(11)(f) establishes the default allocation of damage amounts attributable to medical costs. The Medicaid recipient may prove that a different allocation is the correct allocation.

13. Section 409.910(17)(b) states that a challenger to the statutory lien amount must prove its claim by clear and convincing evidence. Previously, a federal injunction barred the Agency from applying the clear and convincing standard, resulting in application of the preponderance of the evidence standard. However, the United States Court of Appeals for the Eleventh Circuit recently reversed the district court's decision, and, among other things, held that application of the "clear and convincing evidence" burden of proof does not violate federal law. *Gallardo v. Dudek*, 963 F.3d 1167, 1181 (11th Cir. 2020). The undersigned has considered this matter under both the preponderance of the evidence and clear and convincing evidence standards. The outcome is the same applying either standard.

14. Mr. Morales presented the testimony of two qualified personal injury attorneys to support his contention that the Medicaid lien amount should be reduced. They testified in general about a "pro rata" method of allocating a portion of the total recovery to past medical expenses paid by the Agency.

This refers to an analysis of the recovery for an injury, the damages value of a claim for the injury, the components of the damages, and what percentage of the damages should be attributed to past medical expenses, a component of which are the amounts paid by the Agency. Thorough record-based analyses of this sort have been found sufficient and persuasive. *See, e.g., D.T. v. Ag. for Health Care Admin.*, Case No. 21-1122 (Fla. DOAH Sept. 21, 2021); *Touchton v. Ag. for Health Care Admin.*, Case No. 20-3907 (Fla. DOAH Dec. 8, 2020); *Mobley v. Ag. for Health Care Admin.*, Case No. 20-4033 (Fla. DOAH Dec. 21, 2020).

15. Appellate decisions have accepted a proportional reduction or pro rata analysis as a valid, albeit not exclusive, basis for calculating the amount of recovered damages attributable to past medical expenses and allocating the Medicaid portion of those expenses. *Ag. for Health Care Admin. v. Rodriguez*, 294 So. 3d 441, 444 (Fla. 1st DCA 2020); *Bryan v. Ag. for Health Care Admin.*, 291 So. 3d 1033 (Fla. 1st DCA 2020). The cases giving rise to those opinions, like Division of Administrative Hearings Final Orders in Medicaid third party reimbursement cases, involve evidence-based detailed factual analyses of the various elements of damages, including past medical expenses. Sometimes the parties explicitly or tacitly agree that the amount of past medical expenses is the amount paid by Medicaid. Here they do not. The record does not contain the amount of past medical expenses. The Agency questions the absence of proof of all past medical expenses.

16. Mr. Morales' claim rests on the testimony of his expert witness, David Paul. Mr. Paul acknowledged the significance of total medical expenses. He testified that in evaluating the damages value of a case he tries "to get questions answered, like what were the past medical expenses that were billed, because I think that's a very helpful measure in how you calculate the – reasonable value of the noneconomic damages." (Tr. p. 33) Yet he did not know the amount of total medical expenses. Similarly, Mr. Paul testified that lawyers often use the cost of medical treatment as a benchmark "for

discussions over what's the value of noneconomic [damages]." (Tr. 38)
Mr. Paul also stated that he did not include economic damages in the total damages amount used to calculate the percentage of Mr. Morales' recovery attributable to medical expenses. Testifying about this he said, "I can explain why, but I don't have to." (Tr. 43)

17. Mr. Paul's unpersuasive and conclusory testimony about damages and apportionment of them was insufficient to prove by a preponderance of the evidence that the adjusted Medicaid lien of \$84,206.67 should be reduced.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent, Agency for Health Care Administration, recover the entire Medicaid lien amount of \$84,206.67.

DONE AND ORDERED this 28th day of October, 2021, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of October, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.