

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

KAI HUTCHINS,

Petitioner,

vs.

Case No. 22-0654MTR

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

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FINAL ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division), conducted the final hearing in this case on May 13, 2022, in Tallahassee, Florida, by Zoom video conference.

APPEARANCES

For Petitioner: Jason Dean Lazarus, Esquire  
Special Needs Law Firm  
2420 South Lakemont Avenue, Suite 160  
Orlando, Florida 32814

For Respondent: Alexander R. Boler, Esquire  
2073 Summit Lake Drive, Suite 300  
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STATEMENT OF THE ISSUE

What amount of the personal injury claim settlement of Petitioner, Mr. Hutchins, must be paid to Respondent, Agency for Health Care Administration (Agency), to satisfy the Agency's Medicaid lien imposed by section 409.910(6)(c), Florida Statutes (2021)?<sup>1</sup>

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<sup>1</sup> All citations to Florida Statutes are to the 2021 codification unless otherwise noted.

## PRELIMINARY STATEMENT

Mr. Hutchins filed his Petition to Determine Medicaid's Lien Amount on March 1, 2022. 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 May 13, 2022, and was held as scheduled. The parties filed a Pre-hearing Stipulation that included a statement of eight admitted facts. They are incorporated in the Findings of Fact, without substantive alteration.

The parties filed a Joint Motion for Protective Order on May 9, 2022. The Order denying the motion was rendered May 10, 2022.

Mr. Hutchins testified and presented testimony from Clancey Bounds and Dean Burnetti. Both were accepted as experts in damages valuation in personal injury matters. Mr. Hutchins' Exhibits 1 through 5 were admitted into evidence. The Agency did not offer testimony or other evidence. The parties timely filed Proposed Final Orders. They have been considered in the preparation of this Order.

## FINDINGS OF FACT

### Accident, Injuries, and Medical Treatment

1. On September 4, 2020, Mr. Hutchins was driving a 2015 Ford Mustang on Highway 60 in Mulberry, Florida, at 120 miles per hour. Some information indicates Mr. Hutchins was racing a car in another lane. A turning dump truck blocked Mr. Hutchins' lane. Mr. Hutchins crashed into the truck. He was traveling approximately 79 miles per hour at the time of impact and was not wearing a seat belt or shoulder harness. The force of the accident trapped him in the Mustang. Emergency personnel transported Mr. Hutchins to Lakeland Regional Hospital. He was unconscious and spent the next 30 days in a coma. Providers at Lakeland Regional treated Mr. Hutchins on an emergent basis due to his significant injuries. Mr. Hutchins spent 68 days in the intensive care unit at Lakeland Regional. During his

hospitalization and afterwards, he also received treatment from Integrity Prosthetics and LRHS Cardiovascular Surgery Clinic.

2. Mr. Hutchins suffered the following injuries: right femur--complete fracture--resulting in amputation; permanent scarring on head face, hands, and arms; fracture of multiple ribs (right--4th, 5th, 6th, 7th and left--3rd, 4th, 5th, 6th, 7th, 8th); cervical spine fracture--posterior spinous process of C7; thoracic spine fracture--T2 transverse process; lumbar spine fracture--right L2 transverse process; thoracic aorta injury--transection of the thoracic aortic arch distal to the left subclavian artery and extending into the proximal descending thoracic aorta with active extravasation of contrast and a moderate hemopericardium; bilateral hemothoraces in lungs; laceration of the right mandibular region; and groin pseudoaneurysm.

3. The Agency, through its Medicaid program, paid \$148,085.20 for Mr. Hutchins' medical care.

4. Mr. Hutchins' injuries are permanent, serious, and disabling. He will not fully recover and will require medical treatment and other support for the rest of his life. Mr. Hutchins will not be able to return to his job as a motor transportation driver or to hold any other employment. He also will not be able to perform many activities of daily living without assistance.

#### Settlement and Claim by the Agency

5. In November of 2020, Mr. Hutchins demanded \$1,000,000.00 from the insurance carrier responsible for damages caused by the dump truck. This amount was the limit of the applicable insurance policy. Mr. Hutchins and the carrier settled his claim for policy limits.

6. Mr. Hutchins properly notified the Agency of his claim and the settlement of it.

7. The Agency asserted a Medicaid lien for \$148,085.20 against the settlement proceeds. This is the full amount it paid for medical benefits. This is also the full amount of Mr. Hutchins' past medical expenses. The Agency argues that Mr. Hutchins' proof fails because he did not prove his past medical expenses as

required by *Smith v. Agency for Health Care Administration*, 24 So. 3d 590 (Fla. 5th DCA 2009). The record establishes Mr. Hutchins' past medical expenses. Paragraph eight of the statement of admitted and stipulated facts in the Pre-hearing Stipulation states: "AHCA, through its Medicaid program, provided \$148,085.20 in payment for Hutchins' medical care related to his injuries. This \$148,085.20 represents Hutchins' entire claim for past medical expenses."

8. The Agency maintains that it is entitled to application of the formula in section 409.910 to determine the lien amount. Applying the statutory formula to Mr. Hutchins' settlement would result in payment of the full lien amount.

Credible, Persuasive, and Unrebutted Evidence

9. Mr. Hutchins relies upon the opinion testimony of two witnesses to prove what portion of the settlement amount is fairly allocable to past medical expenses.

10. One witness is his lawyer, Dean Burnetti. Mr. Burnetti is a skilled and experienced plaintiff's lawyer. He is board-certified in workers' compensation and civil trial practice. Over the years Mr. Burnetti has handled workers' compensation claims, social security disability claims, trucking accident cases, medical malpractice cases, and nursing home abuse cases. Trucking accident, malpractice, and nursing home negligence cases constitute 50 to 60 per cent of his practice. Limb amputation is among the injuries suffered by his clients in many of these cases. For years, Mr. Burnetti has evaluated cases for damages and liability. He routinely evaluates damages in the scope of his practice. In 36 years, he has evaluated thousands of claims, including their damages. Mr. Burnetti is also familiar with Mr. Hutchins' damages and suffering by virtue of representing him in his claim. He reviewed Mr. Hutchins' medical records, spoke to experts, and consulted with Mr. Hutchins (once he regained consciousness) and Mr. Hutchins' family during his treatment and recovery.

11. Mr. Burnetti is well qualified to value damages in cases involving injuries and medical treatment in general and this case in particular. In addition to applying his substantial experience, Mr. Burnetti consulted with other lawyers in the field, reviewed reported cases, and studied reports of jury verdicts in similar

cases. Jury verdict data reported damages ranging from 4 to 38 million dollars in amputation cases.

12. The other valuation witness, J. Clancey Bounds, was also credible and persuasive. He has practiced law in Florida since 1993. He is also licensed to practice in California, Texas, Arizona, and the District of Columbia. Mr. Bounds has practiced primarily in the area of medical malpractice and personal injury litigation involving catastrophic injuries his entire career. He has seen and evaluated cases from the defendants' and plaintiffs' viewpoints. For his first eight years as a lawyer, Mr. Bounds worked in a medical malpractice defense firm. After that he joined a national plaintiffs' firm to lead its medical malpractice group. Following that he established his own firm concentrating on medical negligence, large trucking claims, asbestos, and other claims involving catastrophic damages.

13. As managing partner of his firm, Mr. Bounds regularly evaluates cases to determine their value. His firm relies upon and makes business decisions based on his evaluations.

14. Mr. Bounds is a member of the Melvin Belli Society and the American Board of Trial Advocates. His credentials, experience, and presentation at the final hearing make his testimony credible and persuasive.

15. In evaluating Mr. Hutchins' damages, Mr. Bounds applied the same process he uses to value cases for his law firm. It also includes consideration of a data bank of verdicts and settlements of his firm's cases. Mr. Bounds reviewed hospital records and emergency medical services records. He informed himself about Mr. Hutchins' injuries and treatment including the amputation of his right leg, a revision of that amputation, multiple fractures, massive blood transfusions, and vascular damage. He also interviewed Mr. Hutchins.

16. When evaluating claims for his firm, Mr. Bounds reviews file materials, considers the admissibility of evidence, considers the venue and likely venire, considers similar claims, and consults with life care planners and economists when time and resources permit. He also conducts jury verdict searches to help determine

the value of economic and non-economic damage claims. His evaluation process is thorough and rational.

17. Mr. Bounds' method is also essentially the same as that of Mr. Burnetti, although there were some understandable variances in amounts each assigned to different components of the damages. In those instances, the undersigned gave greater weight to Mr. Bounds' testimony. Mr. Bounds and Mr. Burnetti reasonably concluded that Mr. Hutchins' damages exceeded \$6,000,000. The United States Supreme Court has recognized that trial lawyers can project damages a plaintiff would likely prove if a case went to trial. *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 640 (2013).

#### Valuation of Damages

18. The components of damages in personal injury cases are past medical expenses, future medical expenses, lost earning capacity, and non-economic damages, including pain and suffering. Past medical expenses are \$148,085.20. The complexity and extent of Mr. Hutchins' injuries, including the amputated limb, which will require a prosthesis and lifelong care for it, are significant factors in valuing Mr. Hutchins' other damages. He has a life expectancy of 34 years. This is a factor in calculating damages. Continuing medical care will cost at least \$25,000 per year, totaling at least \$850,000 in future medical expenses for Mr. Hutchins' remaining 34 years. He will require other care and support beyond that.

19. Mr. Hutchins worked as a laborer earning \$14.00 per hour. He will not be able to return to work. Calculating conservatively, assuming no increase in earnings, Mr. Hutchins economic damages from loss of employment are approximately \$990,080.00. Non-economic damages are harder to estimate. The experience and analysis of Mr. Brunetti and Mr. Bounds were convincing in valuing damages. Reasonably and conservatively valued, Mr. Hutchins' past "pain and suffering" are valued at 1.2 million dollars. Reasonably and conservatively valued, Mr. Hutchins' damages for future pain and suffering are \$3,000,000.00. Altogether, Mr. Hutchins' damages amount to at least \$6,188,165.20. This is the actual value of

actual damages. For purposes of this proceeding, Mr. Hutchins' conservatively values his damages at \$6,000,000.00.

20. Actual damages are not the same as recoverable damages. A variety of factors affect the recoverability of damages. They include comparative negligence, uncertainty about liability, and the amount of insurance coverage and other financial resources available. These factors reduce the recoverable damages here. In this case the comparative negligence of Mr. Hutchins' speed at the time of the crash made any recovery from a jury verdict unlikely. Because of this Mr. Hutchins settled for \$1,000,000.00.

21. Mr. Burnetti and Mr. Bounds divided the amount recovered by the value of Mr. Hutchins' damages to determine what percentage of his actual damages Mr. Hutchins recovered. This calculation is rational and results in a determination that Mr. Hutchins recovered just 16.67 percent of the value of his damages. Applying that percentage to the amount of his past medical expenses determines how much of Mr. Hutchins' settlement was for past medical expenses. Applying 16.67 percent to the past medical expenses of \$148,085.20 demonstrates that Mr. Hutchins recovered \$24,685.80 for his past medical expenses.

#### CONCLUSIONS OF LAW

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

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

24. 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.*

25. 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, 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, settlement, or other payment 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.

26. 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 the Division and provides that section 409.910(11) establishes the default allocation of damage amounts attributable to medical costs. The Medicaid recipient may prove that a different allocation is the correct allocation.

27. Section 409.910(17)(b) requires a challenger to the statutory lien amount to prove his claim by clear and convincing evidence. The parties disagree about whether the standard of proof is clear and convincing or preponderance of the evidence. There is no need to address that issue here. Mr. Hutchins proved his case by clear and convincing evidence.

28. Thorough record-based analyses like the ones Mr. Burnett and Mr. Bounds conducted have been found sufficient and persuasive. *See, e.g., Whitehead v. Ag. for Health Care Admin.*, Case No. 21-388 (Fla. DOAH Apr. 15, 2022); *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). Their analysis here is persuasive. Application of the statutory allocation formula in this matter would result in Mr. Hutchins owing the Agency \$148,085.20. The persuasive, un rebutted, unimpeached evidence in this matter proves that \$24,685.80 of the settlement amount is the amount fairly allocable to past medical expenses. The evidence is clear and convincing. Thus \$24,685.80 is the amount that



the Agency may recover under its lien. The First District Court of Appeal accepts the method used for this determination as sufficient proof of a fair allocation of a settlement amount. *See Soto v. Ag. for Health Care Admin.*, 313 So. 3d 143 (Fla. 1st DCA 2020) (reversing *Soto v. Ag. for Health Care Admin.*, Case No. 17-4556MTR (Fla. DOAH Nov. 28, 2017) for rejecting a *pro rata* allocation like the one proven in this proceeding.). *See also Bryan v. State*, 291 So. 3d 1033 (Fla. 1st DCA 2020); *Larrigui-Negron v. Ag. for Health Care Admin.*, 280 So. 3d 550 (Fla. 1st DCA 2019).

29. In contrast to the credible, persuasive testimony of Mr. Burnetti and Mr. Bounds, the Agency presented no evidence to contest, contradict, or impeach Mr. Hutchins' evidence. Cross-examination elicited no information or flaws that undermine the facts and theory upon which Mr. Hutchins relies. The Agency also did not offer an alternative theory for allocating damages. This void adds additional weight to the testimony and conclusions of Mr. Burnetti and Mr. Bounds. *See Eady v. Ag. for Health Care Admin.*, 279 So. 3d 1249 (Fla. 1st DCA 2019) (A fact finder must have a reasonable basis for rejecting evidence.).

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent, Agency for Health Care Administration, is entitled to recover \$24,685.80 in satisfaction of its Medicaid lien.

DONE AND ORDERED this 3rd day of June, 2022, in Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 3rd day of June, 2022.

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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.