STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TYLER DAGENHART,

Petitioner,

vs.

Case No. 22-0835MTR

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.
_______________________________________/

FINAL ORDER

Pursuant to notice, a formal administrative hearing was conducted via Zoom on May 23, 2022, before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Mark N. Tipton, Esquire
Daniel L. Hightower, P.A.
7 East Silver Springs Boulevard
Ocala, Florida 34470

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

STATEMENT OF THE ISSUE

The issue to be determined is the amount Respondent, Agency for Health Care Administration ("AHCA"), is to be reimbursed for medical expenses paid

on behalf of Tyler Dagenhart ("Petitioner" or "Mr. Dagenhart"), pursuant to section 409.910, Florida Statutes (2021).[1]

PRELIMINARY STATEMENT

If a Medicaid recipient receives an injury settlement from a third party, then section 409.910 mandates that those settlement proceeds shall be used to reimburse the Medicaid program for medical expenses paid on the Medicaid recipient's behalf. This mandate is facilitated by a statutory lien in AHCA's favor on the settlement proceeds, and federal law mandates that Medicaid's lien applies to past and future medical expenses that the Medicaid recipient *actually recovered through the settlement*. When a Medicaid recipient's settlement proceeds are less than the recipient's total damages (which may consist of multiple components, such as past medical expenses, future medical expenses, economic damages, and noneconomic damages), a question can arise as to how much of the medical expenses were actually recovered by the Medicaid recipient and thus subject to the Medicaid lien. Section 409.910(11)(f) sets forth a formula to determine the amount Medicaid shall recover from the settlement proceeds, and section 409.910(17)(b) provides that a Medicaid recipient can request a formal administrative hearing to demonstrate, by clear and convincing evidence, that the past and future medical expenses *actually recovered through the settlement* were less than the amount calculated via section 409.910(11)(f).

On May 26, 2021, Mr. Dagenhart filed a "Petition to Determine the Amount Payable to [AHCA] and Wellcare in Satisfaction of Medicaid Lien" to challenge Medicaid liens filed by AHCA and Wellcare Health Plans, Inc. ("Wellcare"), against settlement proceeds recovered by Mr. Dagenhart via a

[1] Unless indicated otherwise, all statutory references will be to the 2019 version of the Florida Statutes because Petitioner's exhibits indicate his workers' compensation case settled in 2019. *See Suarez v. Port Charlotte HMA*, 171 So. 3d 740, 742 (Fla. 2d DCA 2015).

workers' compensation claim. Mr. Dagenhart valued his total damages as being well in excess of $2,500,000.00. After accounting for attorney's fees and costs, Mr. Dagenhart asserted that his net recovery was $183,951.77, or approximately 7.3 percent of the full value of his damages. Accordingly, Mr. Dagenhart asserted that AHCA was only entitled to recover 7.3 percent of the medical expenses it paid on his behalf, i.e., $8,143.16.

The parties filed a Joint Pre-hearing Stipulation in which they identified stipulated facts for which no further proof would be necessary. Those stipulated facts have been accepted and considered in the preparation of this Final Order.

The final hearing was held as scheduled on May 23, 2022. During the final hearing, Petitioner presented no live testimony. The undersigned accepted Petitioner's Exhibits 1 through 15 into evidence. In the process of doing so, the undersigned noted AHCA's hearsay objections to Petitioner's Exhibits 13 and 14.

AHCA offered no witnesses and did not move any exhibits into evidence.

The one-volume Transcript from the final hearing was filed on June 6, 2022.

Proposed Final Orders were timely filed on June 16, 2022, and both Proposed Final Orders were considered during the preparation of this Final Order.

FINDINGS OF FACT

The following findings are based on exhibits accepted into evidence, admitted facts set forth in the Pre-hearing Stipulation, and matters subject to official recognition.

Facts Pertaining to Petitioner's Injuries, the Settlement, and the Medicaid Lien

1. On November 28, 2018, Mr. Dagenhart was catastrophically injured when he slipped and fell approximately 30 feet from the roof of an airplane hangar. Mr. Dagenhart was transported from the accident scene by ambulance to Ocala Regional Medical Center ("ORMC"). He remained at ORMC until he was discharged on approximately February 13, 2019.

2. Mr. Dagenhart had the following injuries: (a) severely comminuted and angulated distal tibial and fibular fractures in both ankles; (b) a severe complex burst type compression fracture in the lumbar spine with traumatic grade 1 anterolisthesis and extensive hematoma from T12 through the sacral canal; (c) spinal stenosis; and (d) a left wrist fracture.

3. Mr. Dagenhart underwent multiple surgeries and extensive rehabilitation. Nevertheless, he still relies on a wheelchair for mobility.

4. Mr. Dagenhart's charges from ORMC total $1,448,817.80. He incurred additional medical expenses for multiple surgeries, and he also suffered lost wages.

5. Because Mr. Dagenhart was in the course and scope of his employment at the time of the November 28, 2018, accident, he filed a workers' compensation claim.

6. The Employer/Carrier ("the E/C") denied that Mr. Dagenhart was entitled to workers' compensation benefits. In doing so, the E/C asserted that

he tested positive for marijuana metabolites while in the hospital.[2] Mr. Dagenhart also refused to submit to a drug/alcohol test as requested by the E/C.[3]

7. Because of the substantial uncertainty associated with pursuing a claim for workers' compensation benefits, Mr. Dagenhart elected to accept $250,000, inclusive of attorney's fees and costs, as payment for past and future medical and indemnity benefits.

8. Non-compensatory damages, such as pain and suffering, are unavailable under Florida's Workers' Compensation Act.

9. Mr. Dagenhart's net recovery was $183,951.77 because he paid attorney's fees of $62,500 and costs of $3,548.23.

10. AHCA and WellCare paid $98,238.31 and $13,311.87, respectively, for Mr. Dagenhart's past medical expenses. AHCA and Wellcare, through their respective collection contractors, have asserted liens totaling $111,550.18.

11. Pursuant to the formula set forth in section 409.910(11)(f), AHCA and WellCare would be entitled to half of Mr. Dagenhart's net recovery after deducting the taxable costs and 25 percent for attorney's fees. Because Mr. Dagenhart's net recovery after deducting attorney's fees and costs was $183,951.77, the maximum lien allowable under the statutory formula would be $91,975.88 ($183,951.77 x .5 = $91,975.88).

12. Mr. Dagenhart has deposited $91,975.88 into an interest-bearing account pending an administrative determination regarding the amount of AHCA's Medicaid lien.

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[2] Section 440.09(3), Florida Statutes (2019), provides that "[c]ompensation is not payable if the injury was occasioned primarily by the intoxication of the employee; by the influence of any drugs, barbiturates, or other stimulants not prescribed by a physician; or by the willful intention of the employee to injure or kill himself, herself, or another."

[3] Section 440.101(2), Florida Statutes (2019), provides that "a drug-free workplace program must require the employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and, if an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for medical and indemnity benefits."

Valuation of Mr. Dagenhart's Damages

13. Lynne Shigo has been practicing workers' compensation law in Florida since January of 1994. She estimates that workers' compensation accounts for 90 to 95 percent of her current practice. In the course of representing her clients, she must evaluate the full value of particular claims.[4]

14. Ms. Shigo offered the following testimony regarding the value of Mr. Dagenhart's workers' compensation claim:

> Q: And can you tell us if Mr. Dagenhart's entitlement to workers' compensation benefits had not been in dispute, what would be the full value of his case, if you have an opinion?
>
> A: The full value I believe would be approximately about 2.5 million. When you look at the present value of [permanent total disability] that was supplied to me, that was $804,418.96. So also look at the – how much the carrier would approximately pay, which is between 50 and 60 percent of that. Then I looked at the outstanding medical bills which were about 1.5 million. And then at the time of the settlement, he was in a wheelchair and not walking, so I conservatively estimated the medical at 600,000, which really is conservative based upon the fact that his life expectancy was 42.6 years. That would give medical benefits [of] approximately $14,084 and some odd cents a year.
>
> Q: The 600,000, if I understand correctly, would be a future medical projection?

[4] Counsel for Petitioner took Ms. Shigo's deposition in lieu of live testimony and offered her as an expert in the field of workers' compensation. Counsel for AHCA did not raise an objection. The undersigned accepts Ms. Shigo as an expert in workers' compensation.

> A: Yes.[5]
>
> Q: Okay. And then as you're aware, the settlement amount, the amount that Mr. Dagenhart received, was a total of $250,000; is that correct?
>
> A: Yes.
>
> Q: Can you tell us under the workers' compensation act if an accident is occasioned primarily by the intoxication of the employee, what impact does that have on their eligibility for workers' compensation benefits?
>
> A: Huge. Basically the settlement of 250 was a wonderful settlement based upon the fact that he denied taking the drug test. Right there that's a presumption that he was under the influence at the time of the accident which was the reason that he was injured.
>
> Q: Okay. And so his refusal to take the drug test would be – would raise a presumption that he – that this accident was occasioned by intoxication?
>
> * * *
>
> A: Yes.
>
> Q: And if, in fact, he is found to have refused to submit to the drug test and that presumption arose, would that disqualify him from any workers' compensation benefits?
>
> A: Yes. That's why the 250,000 settlement was a wonderful settlement because he could have [gotten] zip, meaning zero.
>
> * * *
>
> Q: Very good. And in terms of your testimony and opinions regarding the full value of

[5] Ms. Shigo testified that the future medical expenses would consist of additional surgeries, pain management, physical therapy, and perhaps occupational therapy.

> Mr. Dagenhart's case, are those opinions you can state within a reasonable degree of legal certainty?
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> * * *
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> A: The – based upon the evidence that I looked at, there's a – the presumption that the intoxication defense would hold with the judge, there would not be clear and convincing evidence to show that the accident would have happened without the alcohol defense. In other words, the intoxication defense is the reason that he was injured, because he was impaired.

Findings Regarding the Testimony Presented at the Final Hearing

15. The undersigned finds that the testimony from Ms. Shigo was compelling and persuasive with regard to the full value of Mr. Dagenhart's claim, his past and future medical expenses, and the present value of his permanent total disability.

16. Ms. Shigo did not provide any testimony that a pro-rata reduction would accurately or correctly determine the portion of Mr. Dagenhart's settlement that accounts for past and future medical expenses. Therefore, Petitioner failed to prove, by clear and convincing evidence, that a lesser portion of his settlement should be allocated as past and future medical expenses than the amount determined via the statutory formula in section 409.910(11)(f).

CONCLUSIONS OF LAW

17. DOAH has jurisdiction over the subject matter and the parties in this case pursuant to sections 120.569, 120.57(1), and 409.910(17), Florida Statutes.

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

19. 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).

20. "The Medicaid program is a cooperative one. The Federal Government pays between 50 percent and 83 percent of the costs a state incurs for patient care. In return, the State pays its portion of the costs and complies with certain statutory requirements for making eligibility determinations, collecting and maintaining information, and administering the program." *Est. of Hernandez v. Ag. for Health Care Admin.*, 190 So. 3d 139, 141-42 (Fla. 3rd DCA 2016)(internal citations omitted).

21. Though participation is optional, once a state elects to participate in the Medicaid program, it must comply with federal requirements. *Harris*, 448 U.S. at 301.

22. One condition for receipt of federal Medicaid funds requires states to seek reimbursement for medical expenses incurred on behalf of Medicaid recipients who later recover funds from legally liable third parties. *See Ark. Dep't of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 276 (2006); *see also Est. of Hernandez*, 190 So. 3d at 142 (noting that one such requirement is that "each participating state implement a third-party liability provision, which requires the state to seek reimbursement for Medicaid expenditures from third parties who are liable for medical treatment provided to a Medicaid recipient.").

23. Consistent with this federal requirement, the Florida Legislature enacted section 409.910, designated as the "Medicaid Third-Party Liability Act," which authorizes and requires the state to be reimbursed for Medicaid funds paid for a recipient's medical care when that recipient later receives a personal injury judgment, award, or settlement from a third party. *Smith v. Ag. for Health Care Admin.*, 24 So. 3d 590 (Fla. 5th DCA 2009); *see also Davis v. Roberts*, 130 So. 3d 264, 266 (Fla. 5th DCA 2013)(stating that in order "[t]o comply with federal directives the Florida legislature enacted

section 409.910, Florida Statutes, which authorizes the State to recover from a personal injury settlement money that the State paid for the plaintiff's medical care prior to recovery.").

24. Section 409.910(1) sets forth the Florida Legislature's clear intent that Medicaid be repaid in full for medical care furnished to Medicaid recipients by providing that:

> 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 repaid 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.

25. In addition, the Florida Legislature has authorized AHCA to recover the monies paid from any third party, the recipient, the provider of the recipient's medical services, and any person who received the third-party benefits. § 409.910(7), Fla. Stat. AHCA's effort to recover the full amount paid for medical assistance is facilitated by section 409.910(6)(a), which provides that AHCA:

> [I]s automatically subrogated to any rights that an applicant, recipient, or legal representative has to

> any third-party benefit for the full amount of medical assistance provided by Medicaid. Recovery pursuant to the subrogation rights created hereby shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, but is to provide full recovery by the agency from any and all third-party benefits. Equities of a recipient, his or her legal representative, a recipient's creditors, or health care providers shall not defeat, reduce, or prorate recovery by the agency as to its subrogation rights granted under this paragraph.

See also § 409.910(6)(b)2., Fla. Stat. (providing that AHCA "is a bona fide assignee for value in the assigned right, title, or interest, and takes vested legal and equitable title free and clear of latent equities in a third person. Equities of a recipient, the recipient's legal representative, his or her creditors, or health care providers shall not defeat or reduce recovery by the agency as to the assignment granted under this paragraph.").

26. AHCA's efforts are also facilitated by the fact that AHCA has "an automatic lien for the full amount of medical assistance provided by Medicaid to or on behalf of the recipient for medical care furnished as a result of any covered injury or illness by which a third party is or may be liable, upon the collateral, as defined in s. 409.901." § 409.910(6)(c), Fla. Stat.

27. The amount to be recovered by AHCA from a judgment, award, or settlement from a third party is determined by the formula in section 409.910(11)(f). *Ag. for Health Care Admin. v. Riley*, 119 So. 3d 514, 515 n.3 (Fla. 2d DCA 2013).

28. Section 409.910(11)(f) provides:

> 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.

29. Applying the formula in section 409.910(11)(f) to Mr. Dagenhart's $250,000 settlement results in AHCA being owed $91,975.88.

30. As noted above, section 409.910(6) prohibits the Medicaid lien from being reduced because of equitable considerations. However, when 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 a 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).

31. Section 409.910(17)(b) provides, in pertinent part, that:

> 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). . . . In order to successfully challenge

> the amount payable to the agency, the recipient must prove, by clear and convincing evidence,[6] that a lesser portion of the total recovery should be allocated as reimbursement for past and future medical expenses[7] 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.

32. Therefore, the formula in section 409.910(11)(f) provides an initial determination of AHCA's recovery for medical expenses paid on a Medicaid recipient's behalf, and section 409.910(17)(b) sets forth an administrative procedure for adversarial testing of that recovery. *See Harrell v. State*, 143 So. 3d 478, 480 (Fla. 1st DCA 2014)(stating that petitioner "should be afforded an opportunity to seek the reduction of a Medicaid lien amount established by the statutory default allocation by demonstrating, with evidence, that the lien amount exceeds the amount recovered for medical expenses.").

33. In the instant case, the parties agree that Petitioner recovered 10 percent of the full value of his case. The parties also agree that the statutory formula in section 409.910(11)(f) would result in AHCA recovering $91,975.88.

34. Mr. Dagenhart made the following argument in his Proposed Final Order:

> The only two categories of benefits that go into calculating the full value of a workers' compensation settlement according to Ms. Shigo's testimony are medical and indemnity benefits. Carving out $804,000.00, the approximate value of the Petitioner's potential indemnity benefits, from the $2,500,000.00 full value of the Petitioner's

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[6] *See Gallardo by & through Vassallo v. Dudek*, 963 F.3d 1167, 1182 (11th. Cir. 2020)(finding no conflict between the clear and convincing evidence standard and federal law).

[7] The United States Supreme Court recently determined in *Gallardo v. Marstiller*, 2022 WL 1914096 (U.S. 2022), that the Medicaid lien attaches to past and future medical expenses.

> workers' compensation case, as testified to by Ms. Shigo, reveals that approximately 68% of the full value of the Petitioner's case, or approximately $1,700,000.00, was attributable to past and future medical care. Applying this percentage to approximate how much of the gross settlement is attributable to the medical care reveals that approximately $170,000.00 of the settlement is fairly allocated to past and future medical care. ($250,000.00 gross settlement * 68% = $170,000.00). Thus, [Mr. Dagenhart]'s settlement represents approximately 10% of the full value of his past and future medical care. ($170,000.00/$1,700,000.00).
>
> The statutory (11)(f) formula would result in AHCA recovering $91,975.88. This represents a recovery of approximately 82.4% of the total amount expended by Medicaid, whereas the Petitioner only recovered 10% of the full value of his case.
>
> * * *
>
> Contrary to the mandate in <u>Wos</u>, the (11)(f) formula does not achieve a fair allocation where AHCA would recover over 82% of the amount expended on medical care, and the Petitioner recovered only 10% of the value of his case. I find that AHCA's proper lien recovery should be in the same proportion as [Petitioner]'s net recovery to the full value of his settlement. Thus, AHCA is entitled to recover $9,823.83, 10% of the amount paid by AHCA.

35. In short, Mr. Dagenhart argues that the statutory formula in section 409.910(11)(f) does not achieve a fair allocation when it would result in AHCA recovering over 82 percent of the amount it spent on Petitioner's medical care while Petitioner's settlement only represents 10 percent of the full value of his workers' compensation claim. Therefore, Petitioner utilizes the "pro rata method" to argue that AHCA's recovery should be limited to 10 percent, i.e., $9,823.83, of the $98,238.31 AHCA spent on Petitioner's past

medical care. *See generally Willoughby v. Ag. for Health Care Admin.*, 212 So. 3d 516, 522 (Fla. 2d DCA 2017)(noting that Appellant argued for a pro rata allocation "because the settlement represents but only some forty percent of the total value of the case, Mr. Willoughby urges that AHCA can recover only about 40 percent of the expenses it incurred.").

36. Mr. Dagenhart's argument regarding what portion of his settlement represents past and future medical expenses is limited to a computational argument set forth in his Proposed Final Order. That argument is unsupported by any expert testimony opining that this computational argument is a reasonable method by which to determine what portion of Mr. Dagenhart's settlement amounts to a recovery of past and future medical expenses.[8]

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[8] Mr. Dagenhart's argument differs from those of other petitioners who have predominantly relied on expert testimony to justify a pro rata reduction in AHCA's Medicaid lien. The detailed opinion in *Eady v. State*, 279 So. 3d 1249 (Fla. 1st DCA 2019), describes how petitioners typically argue for a pro rata reduction. The *Eady* petitioner called two attorneys as witnesses, and both were accepted as experts in the valuation of damages. *Id.* at 1251. The first expert witness conservatively estimated the value of the petitioner's damages as being at least $15,000,000. *Id.* at 1252. That witness then testified that the petitioner's $1,000,000 settlement represented approximately 6.66 percent of his total estimated damages.

> "Applying that same percentage difference to the $177,747.91 in past medical expenses claimed by AHCA, [the first witness] testified that $11,838 *would be a reasonable allocation of the confidential settlement agreement for past medical expenses*. In other words, the $11,838 represented a pro rata share of the million dollar settlement." *Id.* (emphasis added)

The second expert witness agreed that $15,000,000 was a conservative estimate of the petitioner's total damages. *Id.* at 1253. The second expert witness also agreed that the petitioner's $1,000,000 settlement represented a 6.66 percent recovery of his total damages.

> "[The second expert] also agreed that if [the petitioner] recovered only 6.66% of the full value of his case, that same percentage should be allocated to past medical expenses recoverable by AHCA. Furthermore, he added that applying that ratio was not only reasonable, but was common practice in the legal proceedings with which he historically had been associated. Again, [the second expert witness] approved of the notion that applying a pro rata formula to the settlement amount would result in $11,838 allocated to past medical expenses." *Id.*

37. As a result, the outcome of the instant case is controlled by *Gray v. Agency for Health Care Administration*, 288 So. 3d 95 (Fla. 1st DCA 2019).

38. In *Gray*, an ALJ ruled that AHCA was entitled to recover the full amount of its Medicaid lien. The *Gray* appellant argued, in part, that the ALJ erred by failing to use a pro rata formula to calculate AHCA's portion of the recovery. In rejecting that argument, the Court ruled as follows:

> Gray argued that the $10,000 recovery represented 0.349% of the value of his $2.8 million verdict, so AHCA's lien should be limited to 0.349% of the total amount Medicaid expended in medical benefits ($65,615.054), which would equate to $229.49. AHCA argued that, under the statutory formula, it was entitled to $3,750 from Gray's recovery and that Gray failed to prove that AHCA should be entitled to a lesser amount. Gray conceded that no case law or other statute authorized the ALJ to apply a pro rata formula instead of the formula provided in the statute.
>
> The ALJ found that Gray failed to show by clear and convincing evidence that AHCA was entitled to less than the presumptive amount under the statute - $3,750. The ALJ found no evidence in the record to show that "the $10,000 recovery does not include at least $3,750 that could be attributed to [Gray's] medical costs. Neither does the evidence indicate that the $3,750 amount includes payments for expenses other than [Gray's] medical care and services." The ALJ ruled that AHCA was entitled to $3,750 from the $10,000 recovery.
>
> * * *
>
> Even though he failed to produce evidence or present testimony to meet his burden to show that the lien amount should be reduced, Gray maintains that the ALJ should have used a pro rata formula to calculate AHCA's share of the tort recovery. Gray acknowledges that nothing in the statute

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Mr. Dagenhart did not provide expert testimony of a similar nature.

> authorizes the ALJ to use a pro rata formula to calculate the lien amount. Rather, *in situations such as this case, when the plaintiff fails to produce evidence or present testimony showing that the lien amount should be reduced, the plain language of section 409.910(11)(f) requires the ALJ to apply the statutory formula. The ALJ did exactly that here and did not err in calculating the lien amount.*

Gray, 288 So. 3d 95. (emphasis added)

39. Like the appellant in *Gray*, Mr. Dagenhart failed to carry his burden of demonstrating that AHCA's Medicaid lien should be reduced. There is no competent, substantial evidence on which the undersigned could base a finding that a lesser portion of the total recovery should be allocated as reimbursement for past and future medical expenses than the amount calculated by AHCA pursuant to the formula set forth in section 409.910(11)(f). *See* § 409.910(17)(b).

40. Moreover, even if Mr. Dagenhart had presented evidence sufficient to justify utilizing the pro rata method, the formula in section 409.910(11)(f) would still control. The United States Supreme Court recently ruled that a Medicaid lien attaches to past and future medical expenses. *See Gallardo v. Marstiller*, 2022 WL 1914096 at *5 (U.S. 2022)(stating that "[t]he relevant distinction is thus "between medical and nonmedical expenses, not between past expenses Medicaid has paid and future expenses it has not.").

41. Mr. Dagenhart's past medical expenses include $1,448.817.80 in outstanding medical bills, $98,238.31 in medical bills paid by AHCA, and $13,311.87 in medical bills paid by Wellcare. Thus, Mr. Dagenhart's total past medical expenses are $1,560,367.98. With Ms. Shigo estimating Mr. Dagenhart's future medical expenses to be $600,000, then his past and future medical expenses total $2,160,367.98. Because 10 percent of that total results in a recovery far in excess of AHCA's lien (i.e., $216,036.80), the lien must be paid via the statutory formula in section 409.910(11)(f).

42. In sum, Mr. Dagenhart failed to prove by clear and convincing evidence that a lesser portion of his settlement should be allocated as past and future medical expenses than the amount determined via the statutory formula 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 $91,975.88 in satisfaction of its Medicaid lien.

DONE AND ORDERED this 6th day of July, 2022, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of July, 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.