

2020 WL 6777560

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District Court of Appeal of Florida, First District.

Joseph Pinto DOMINGO, a minor, by and through his parents and natural guardians, Aurileia Dos Reis Pinto and Nilton Pinto, Appellant,

v.

STATE of Florida, [Agency for Health Care Administration](#), Appellee.

No. 1D18-2573

November 18, 2020

#### Synopsis

**Background:** Medicaid recipient petitioned for review of determination of the Division of Administrative Hearings, R. Bruce McKibben, ALJ, that he was not entitled to a reduction of Medicaid lien placed against the proceeds from his medical malpractice settlement by the Agency for Health Care Administration (AHCA).

The District Court of Appeal held that recipient presented competent, substantial evidence that Medicaid lien should have been reduced by one-third.

Reversed and remanded with instructions.

**Procedural Posture(s):** Review of Administrative Decision.

On appeal from the Division of Administrative Hearings. R. Bruce McKibben, Judge.

#### Attorneys and Law Firms

[Floyd B. Faglie](#) of Staunton & Faglie, PL, Monticello, for Appellant.

Alexander R. Boler of Boler Legal, PLLC, Tallahassee; Shena L. Grantham, [Stefan Grow](#), Kim Kellum, and [Thomas M. Hoeler](#), Agency for Health Care Administration, Tallahassee, for Appellee.

#### Opinion

Per Curiam.

\*1 In this case, the appellant argues that the administrative law judge (ALJ) erred when he determined that the appellant was not entitled to a reduction of the Medicaid lien placed against the proceeds from his medical malpractice settlement by the Agency for Health Care Administration (AHCA). The appellant claims that the ALJ erred by rejecting the un rebutted testimony of his expert witnesses, who testified that a pro rata formula should have been used to reduce the Medicaid lien. The ALJ concluded that the Legislature did not authorize the use of the pro rata formula.

Since this case was decided by the ALJ, the Florida Supreme Court and this Court have accepted the use of the pro rata method to reduce the Medicaid lien when the Medicaid recipient has presented competent, substantial, and uncontradicted evidence to support his position that only a portion of the settlement should be allocated for past medical expenses.\* [Giraldo v. Agency for Health Care Admin.](#), 248 So. 3d 53, 56 (Fla. 2018); [Bryan v. State](#), 291 So. 3d 1033, 1036 (Fla. 1st DCA 2020); [Mojica v. Agency for Health Care Admin.](#), 285 So. 3d 393, 398 (Fla. 1st DCA 2019); [Eady](#), 279 So. 3d at 1259.

In this case, the appellant presented competent, substantial, and uncontradicted evidence to support the reduction of his Medicaid lien by using a pro rata method. AHCA failed to present any evidence that the appellant's proposed pro rata methodology was inaccurate or that another method would be more appropriate to apply. As a result, the ALJ erred as a matter of law by concluding that the appellant failed to prove that his Medicaid lien should have been reduced. *See Mojica*, 285 So. 3d at 396–98. We note that the appellant's proposed amount that AHCA should recover for its Medicaid lien was mathematically incorrect; however, the appellant presented competent, substantial evidence that the Medicaid lien should be reduced by one-third. Accordingly, we reverse and remand the cause to the Department of Administrative

**Domingo v. State, --- So.3d ---- (2020)**

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45 Fla. L. Weekly D2603

Hearings for the ALJ to reduce AHCA's Medicaid lien to \$213,724.68.

Reversed and Remanded with instructions.

[B.L. Thomas](#), [Roberts](#), and [Rowe](#), JJ., concur.

**All Citations**

--- So.3d ----, 2020 WL 6777560, 45 Fla. L. Weekly D2603

Footnotes

- \* While this case was pending, other similar cases were pending, and another panel had already set [Eady v. State, 279 So. 3d 1249 \(Fla. 1st DCA 2019\)](#), for oral arguments. As a result, multiple supplemental authorities had been filed that this panel was required to consider.

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