MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. AND-25-479

ASHLEY LYNNE, et al.
Plaintiffs/Appellees

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.
Defendants/Appellants

On Appeal from Androscoggin County Superior Court

Reply Brief of Defendants/Appellants Department of Health and Human Services and Commissioner Sara Gagné-Holmes

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Introduction

As shown in the principal brief filed by the Department of Health and Human Services and Commissioner Sara Gagné-Holmes (collectively, "DHHS"):

1) To operate MaineCare, DHHS is required to recover its medical costs from liable third parties (the "Medicaid Recovery Requirement"). *See* 42 U.S.C.A. §§ 1396a(a)(25)(A)-(B) & (H); 1396a(a)(45); 1396k(a) (Westlaw through Pub. L. No. 119-80); (*see also* Blue Br. 12-14.).
2) DHHS's recovery is limited by the Medicaid Act's "Anti-Lien Provision." *See* 42 U.S.C.A. § 1396p(a)(1) (Westlaw through Pub. L. No. 119-80); (*see also* Blue Br. 14-15.)
3) The Anti-Lien Provision acts to prohibit DHHS's recovery of its medical costs from the portion of the award or settlement that represents recovery for non-medical expenses. *See Gallardo By & Through Vassallo v. Marstiller*, 596 U.S. 420, 429 (2022); (*see also* Blue Br. 14-21.)
4) Apportioning the medical expenses of an unallocated settlement can be (but is not required to be) conducted by using the total value of the tort action as compared to the resulting settlement. *See e.g.*, *Ark. Dep't*

of Health & Hum. Servs. v. Ahlborn, 547 U.S. 268, 280-81 (2006); (*see also* Blue Br. 21.)

5) When apportioning a settlement based on undisputed facts concerning the total value of the tort action, mathematical principles require consistency in calculation. The same damages that were used to calculate the total value must be used when pro-rating the resulting settlement that is based on that total value. *See* W*os v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 640–41 (2013) ("What portion of this lump-sum settlement constitutes 'fair and just compensation' for each individual claim will depend both on how likely [plaintiff] would have been to prevail on the claims at trial and how much they reasonably could have expected to receive on each claim if successful, in view of damages awarded in comparable tort cases."); (*See also* Blue Br. 22-26.)

To be clear, DHHS is <u>not</u> seeking a ruling that the amount of medical bills must always be considered when allocating the medical expenses of a settlement. Rather, it seeks a ruling that when apportioning a settlement based on the total value of the underlying tort action, the individual damage amounts that were used in that calculation correspond to the amounts that are used to allocate the settlement

between medical and non-medical expenses.

Argument

I. The correct standard of review is *de novo*, not abuse of discretion.

Ms. Lynne and L.W. argue that the Superior Court's ruling should be reviewed for abuse of discretion. (Red Br. 8-10; Maine Trial Lawyers Association ("MTLA") Br. 10-13.) Ms. Lynne and L.W.'s position largely rests on the presence of the word "reasonable" in the underlying statute. 22 M.R.S.A. § 14(2-F) (Supp. 2026) ("Either party may apply . . . for an order to determine a reasonable amount in satisfaction of the statutory lien, consistent with federal law."). Their argument analogizes the reasonable discretion of the Superior Court in this case to that wielded by the County Commissioners in *Sager v. Town of Bowdoinham*, 2004 ME 40, 845 A.2d 567. (Red Br. 8-10.)

Their analogy fails, however, for several reasons. A key difference from *Sager* is that Section 14(2-F) requires that a court's determination be consistent with federal law. 22 M.R.S.A. § 14(2-F).

In *Farah v. Department of Medical Assistance Services*, the Supreme Court of Virginia analyzed Virgina's Medicaid recovery statute. 868 S.E.2d 422 (Va. 2022). At the time, the Virgina Medicaid statute

permitted "a trial court to reduce a Medicaid lien 'as the equities of the case may appear.'" *Id*. at 426 (quoting the Virginia Statute). The court in *Farah* noted that while the Supreme Court of the United States in *Ahlborn* and *Wos* did not prescribe a particular method of calculation, the Supreme Court did cabin a court's absolute discretion. *Id*. ("Courts are not free to simply choose a number that seems fair."); *see Wos* (discussing that "federal law requires an assignment to the State 'the right to recover that portion of a settlement that represents payments for medical care,' but it also 'precludes attachment or encumbrance of the remainder of the settlement[,]' creating "both a floor and a ceiling on a State's potential share of a beneficiary's tort recovery") (emphasis added). In this crucial manner, the current case is distinct from the more permissive discretion reviewed in *Sager*. 2004 ME 40, ¶ 10, 845 A.2d 567 ("The key language authorizes the municipal officials to 'make such abatements as they believe reasonable.'").

The Superior Court's determination of a reasonable amount relies on numerous legal conclusions concerning the Medicaid statutes, Supreme Court precedent, and the MaineCare statutes. (A. 12-18.) In DHHS's view, some of its legal conclusions are incorrect, resulting in an

Order that does not reflect a reasonable amount to satisfy the MaineCare Lien consistent with federal law. In a *de novo* review of the entry of summary judgment, this Court "review[s] *de novo* the trial court's interpretation and application of the relevant . . . legal concepts." *Att'y Gen. v. Pine Tree Council, Inc.*, 2025 ME 2, ¶ 16, 331 A.3d 258 (quotation marks omitted). The rest of this section presents DHHS's arguments concerning the Superior Court's interpretation and application of certain legal concepts; each of which is entitled to *de novo* review.

A. The Superior Court incorrectly concludes that the Medicaid Act's Anti-Lien Provision facially limits consideration of the amount of medical expenses in a settlement only to the amount previously paid by DHHS.

Central to the Superior Court's decision is its legal conclusion that "[DHHS]'s proposed formula improperly injects the total medical expenses billed into the equation, rather than utilizing the amount MaineCare actually paid, which yields an inflated result that is contrary to 22 M.R.S. § 14(2-F) and the federal anti-lien provision." (A. 16-17; Red Br. 15; MTLA Br. 14-16.) This is not a conclusion of fact to be provided deference. Rather, it is a legal conclusion about the Anti-Lien Provision – a conclusion that heavily influences the analysis as to what is a

reasonable amount to satisfy the MaineCare Lien consistent with federal law. (A. 16-17.).

The Supreme Court's most recent decision addressing the Anti-Lien Provision, *Gallardo By and Through Vassallo v. Marstiller*, determined that both "past and future medical expenses" can be part of the medical expenses portion of a settlement. 596 U.S. at 428. In *Gallardo*, the Supreme Court explained that Section 1396k(a)(1)(A) grants the state Medicaid agency recovery for "any rights ... to payment for medical care" and emphasized the distinction established in *Wos* "between medical and nonmedical expenses" is the distinction relevant in the application of the Anti-Lien Provision. *Id.* at 429 ("In short, § 1396k(a)(1)(A) and § 1396a(a)(45) distinguish only between medical and nonmedical care, not between past (paid) medical care payments and future (unpaid) medical care payments."). The Supreme Court held that Florida's practice of enforcing its Medicaid Liens against portions of a tort settlement that compensated the plaintiff for future medical bills, *i.e.*, those that had not yet been paid, did not violate the Anti-Lien Provision. *Id.* at 428, 430. This holding directly contradicts the bright line rule in the Superior Court Order that the Anti-Lien Provision prohibits examination beyond

the amount paid by the Medicaid Agency when allocating the medical expenses portion of a Medicaid recipient's settlement. (*See* A. 17.)

The Superior Court's conclusion that the Anti-Lien Provision confines settlement allocation of medical expenses only to the amount that DHHS paid is contrary to clear Supreme Court precedent.

B. The Superior Court made an incorrect legal conclusion concerning the numerators required to calculate an apportionment of a settlement pursuant to *Ahlborn*.

The Superior Court incorrectly concluded that "[t]he values necessary to apply the *Ahlborn* formula include the settlement amount, the full amount of a plaintiff's claim, and the amount of medical bills actually paid." (A. 18; *see also* MTLA Br. 12-13.) This conclusion misreads *Ahlborn*. Footnote 10 of *Ahlborn* explains how the parties' stipulations should operate, which the Superior Court misconstrued in its attempt to apply to the facts of *Ahlborn* to this case. 547 U.S. at 281, n.10.

In footnote 10, the Supreme Court explained how the parties' stipulations operated on the settlement allocation. *Id*. "The effect of the stipulation is the same as if a trial judge had found that Ahlborn's damages amounted to $3,040,708.12 (of which $215,645.30 were for

medical expenses), but because of her contributory negligence, she could only recover one-sixth of those damages." *Id.*

That is the same analysis that DHHS is asking for in this case, which would be consistent with federal law and *Ahlborn*.[1] Due to the parties' stipulations in *Ahlborn*, the amount that the Medicaid agency paid and the amount that represented compensation for medical expenses in the total value of the case were the same number. The use of these particular figures was specific to *Ahlborn*, and should not be viewed as a mandate from the Supreme Court. In this case, by contrast, the amount of medical expenses that supported the valuation of the tort action was the amount of medical expenses billed. (A. 52, 55, 60.) Thus, the correct application of *Ahlborn*, in this case, would use the numerators identified by DHHS.

[1] The stipulated facts establish that Ms. Lynne and L.W.'s total damages amounted to $375,000 (of which $204,183,78 were for medical expenses), but the settlement only reflects approximately 54% of those damages. (A. 51-55.) Those amounts should be used for the settlement allocation in this case because Ms. Lynne and L.W. chose to use the amount billed to represent their medical expenses to support the calculation of the total damages in the tort action. Conversely, due to the stipulation in *Ahlborn*, the medical expenses that supported the total damages in that tort action was the amount the Arkansas Medicaid agency paid. The Superior Court's blanket application of the *Ahlborn*-specific stipulations to the present case fails to properly apply the general rule in *Ahlborn*.

C. The Superior Court incorrectly interprets the MaineCare recovery statute.

Ms. Lynne and L.W. repeat the Superior Court's conclusion that the plain language of 22 M.R.S.A. § 14 confines a court's allocation of a settlement that is subject to a MaineCare Lien to the amounts that DHHS paid. (A. 16 ("The plain language of section 14(2-F) focuses not upon services billed by MaineCare but instead upon services paid, requiring the Court to determine the reasonable 'amount of the . . . settlement that constitutes reimbursement for medical payments made.'") Red Br. 14-17; *see also* MTLA Br. 14-16.) Statutory interpretation is reviewed *de novo* by examining the statute's plain meaning "construing it to avoid absurd, illogical, or inconsistent results." *Waterman v. Wheeler*, 2025 ME 96, ¶ 4, 347 A.3d 1028 (quotation marks omitted). Additionally, "[a]ll words in a statute are to be given meaning, and no words are to be treated as surplusage if they can be reasonably construed." *Id.* (quotation marks omitted).

Ms. Lynne and L.W. and the Superior Court conflate the establishment of the MaineCare Lien amount (which must be based on the amount that DHHS paid) and the calculation of the portion of an award or settlement that represents a plaintiff's claim for medical

expenses (which is largely influenced by how a plaintiff chooses to prosecute their underlying tort case). Mixing these two concepts, the Superior Court wrongly concluded that DHHS "improperly inject[ed] the total medical expenses billed into the equation" because the plain language of 22. M.R.S. § 14(2-F) focuses on "services paid." (A. 16.)

However, a review of the statute reveals that no such bright line limit exists. The MaineCare Lien statute provides in part:

> The commissioner's right to recover the cost of benefits provided constitutes a statutory lien on the proceeds of an award or settlement from a 3rd party if recovery for MaineCare costs was or could have been included in the recipient's claim for damages from the 3rd party to the extent of the recovery for medical expenses.

22 M.R.S.A. § 14(1). The statute uses the term "costs of benefits provided" to establish the creation of the MaineCare Lien (the amount that DHHS paid). The statute then limits DHHS's recovery of its MaineCare Lien "to the extent of recovery for medical expenses" (the portion of the settlement that is attributable to medical expenses).

These two values are not necessarily the same number in all cases. Only when the medical expenses portion of the settlement is less than

the MaineCare Lien is a reduction required pursuant to the Anti-Lien Provision.

The MaineCare Lien statute further provides:

> The commissioner is entitled to recover the cost of the benefits actually paid out when the commissioner has determined that collection will be cost-effective to the extent that there are proceeds available for such recovery after the deduction of reasonable attorney's fees and litigation costs from the gross award or settlement.

Id. (emphasis added). The language reflects that the Legislature enacted this statute with the expectation that at least in *some* settlement cases DHHS could recover the full amount of its lien. An expectation that is nigh impossible if the Superior Court's interpretation that Section 14 facially narrows what a court may consider when allocating a settlement is upheld.[2]

An analysis of Subsection 14(2-F) is equally unsupportive of Ms. Lynne and L.W.'s position and the Superior Court Order. The entire

[2] If a court decided to conduct an independent allocation of damages in the settlement, rather than rely on apportionment based on stipulations, then it may be reasonable to consider just the expenses that DHHS paid. *See, e.g.*, *Farah*, 868 S.E.2d at 424. Or if a plaintiff in their underlying tort action only sought the amount that DHHS paid to compensate their medical expenses, then limiting consideration to only that amount when allocating the settlement may also be reasonable. *See, e.g.*, *Ahlborn*, 547 U.S. at 281, n.10.

sentence pulled from subsection 14(2-F) relied on by the Superior Court provides:

> Except as otherwise provided in this subsection, a disbursement of any award, judgment or settlement may not be made to a recipient without the recipient or the recipient's attorney first paying to the department that amount of the award, judgment or settlement that constitutes reimbursement for medical payments made or obtaining from the department a release of any obligation owed to it for medical benefits provided to the recipient.

The reference to "medical payments made" here is consistent with DHHS's position. This provision's purpose is to prohibit disbursement of a tort award until the MaineCare Lien has been satisfied. Its purpose is not to limit a court's effort to allocate a settlement in any particular way.

II. Even if reviewed for abuse of discretion, the Superior Court's Order should be vacated.

Even if this Court were to review for an abuse of discretion, as argued by Ms. Lynne and L.W., the Superior Court Order should be vacated. (Red Br. 8-10; MTLA Br. 10-11.) When "determining whether there has been an abuse of discretion," the Court's "inquiry focuses upon whether (1) the court's factual findings, if any, are supported by the record; (2) the court correctly understood and applied the law; and (3) the

court's ultimate determination was within the bounds of reasonableness." *Adoption by Kathleen C.*, 2026 ME 14, ¶ 5, --- A.3d ---.

As discussed in Section I, the Superior Court failed to correctly apply the law. The Superior Court stated that it is using the "*Ahlborn* formula" to calculate a reasonable amount to satisfy the MaineCare Lien consistent with federal law. (A. 18.) However, the Superior Court's application of the formula "results in a pro-rata reduction of the MaineCare lien to $14,540.25." (A. 18 (emphasis added).) Thus, the trial court did not determine what portion of the settlement is attributable to medical expenses based on the facts of this case.

Rather, the Superior Court Order creates a MaineCare Lien reduction calculator that does not bear a relationship to the amount of medical expenses included in the settlement. The Superior Court applied the specific stipulated facts in one case (*Ahlborn*) to the case before it without taking into account whether that approach was supported by the evidence or the underlying rule.[3]

[3] This is an incorrect interpretation of *Ahlborn*. As discussed above, the Superior Court Order fails to consider how the total value of the tort action was calculated in this case differed from how that value was calculated in *Ahlborn*.

Such an approach is not reasonable. The approach utilized by the Superior Court does not determine whether there is a conflict between the Anti-Lien Provision and the Medicaid Recovery Requirement by examining the settlement, but rather imposes a presumption that there is a conflict and attempts to calculate the extent of that conflict. It is the opposite side of the same coin to North Carolina's approach that was struck down in *Wos*. In *Wos*, the North Carolina statute presumed that one third of all settlements are attributable to medical expenses. 568 U.S. at 631. Here, the approach selected by the Superior Court presumes that the Medicaid Lien must be reduced if the settlement is less than the total value of the claim. Both approaches suffer from the same flaw, neither allows for a full examination of the facts that led to formation of the settlement. The Superior Court abused its discretion, as it did not reasonably consider the evidence supporting this particular settlement's creation, but applied the stipulated facts from a separate case (*Ahlborn*) to this one.

The Superior Court Order is unreasonable as it fails to actually prorate the medical expenses portion of the settlement. The process utilized by the Superior Court is ripe for inconsistent calculation as it

allows the use of a higher billed amount to represent medical expenses to value the tort action, but then uses an inconsistent amount, (the amount DHHS actually paid), to represent medical expenses in that same tort action solely for the apportionment of the resulting settlement. This is not proration because there is no rational relationship to the amount of medical expenses used in the calculation of the total value of the tort action and the calculation of the medical expenses in the settlement. (Blue Br. 26-31.)

III. If this Court approves the Superior Court Order as a reasonable process for allocating settlements, it will be binding on DHHS, which is a party to all MaineCare Lien actions.

Ms. Lynne and L.W. argue that the Superior Court Order is particular to this case and that it will not have wider application to other MaineCare Lien cases. (Red Br. 17-21.) That argument is not persuasive. The Superior Court Order addresses how the Anti-Lien Provision is applied to MaineCare Liens. (A. 15-18.) The formula utilized in the Superior Court Order is not truly specific to the facts of this case, but can be universally applied to almost all MaineCare Lien cases.

Most MaineCare Lien recovery occurs outside of the courtroom. This case will be the only guidance in Maine that parties have when

trying to determine the amount that DHHS may recover. The Superior Court Order endorses a formula that precludes DHHS from ever recovering the full amount of its MaineCare Lien. The Anti-Lien Provision is not optional, but neither is the requirement that DHHS recover its medical costs to the extent of a third party's legal liability. 42 U.S.C.A. § 1396a ("[T]he State or local agency will seek reimbursement for such assistance to the extent of such legal liability") (emphasis added); *see Farah*, 868 S.E.2d at 426 ("Courts are not free to simply choose a number that seems fair."). A reasonable allocation must weigh both of these mandates and strike a balance between them.

The Maine Legislature has not prescribed a process to conduct settlement allocation for MaineCare Liens. Apportionment based on the total value of a settlement is a straightforward method for DHHS and a plaintiff to resolve disputes over the MaineCare Lien.

The Superior Court Order provides a formula that precludes DHHS from full recovery in any case where the settlement is less than the total value of the underlying tort action, regardless of how that total value is calculated. Plaintiffs and their attorneys will likely seek to use the Superior Court's formula.

Alternative methods of allocation either require legislative action, or will result from case by case court allocations that provide little precedential value. *See e.g.*, *Farah*, 868 S.E.2d at 424 (finding that the Medicaid agency would receive almost all of its lien despite the settlement potentially only representing 10% of the tort action's value); *Matter of Est. of Martin v. Ark. Dep't of Hum. Servs.*, 574 S.W.3d 693, 699 (Ark. App. Ct. 2019) (determining that the actual value of a plaintiff's case is not a theoretical projection but the amount that the plaintiff is willing to settle for).

IV. The Court should reject Ms. Lynne's and L.W.'s Due Process Argument.

Ms. Lynne and L.W. raise a Due Process argument. (Red Br. 21-23.) The Court should reject it.

Both the federal and Maine Constitutions generally provide that "No person shall be deprived of life, liberty or property without due process of law[.]" Me. Const. art. I, § 6-A; U.S. Const. amend. XIV, § 1. This Court uses a two-step process to determine "whether a person has been deprived of a protected interest without due process of law[.]" *Doe v. Hills-Pettitt*, 2020 ME 140, ¶ 10, 243 A.3d 461. The first step is to "determine if the government has deprived a claimant of life, liberty, or

property interests." *Id.* If the first step is met, the Court then determines "what process, pursuant to the Fourteenth Amendment, is due utilizing the factors" in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Id.*

Ms. Lynne and L.W.'s Due Process argument fails at the first step of this test. Pursuant to 22 M.R.S.A. § 14, by accepting the receipt of benefits under the MaineCare program, Ms. Lynne and L.W. granted a right of recovery to DHHS for the cost of medical expenses. *See also* 42 U.S.C.A. § 1396k(a)(1). This assignment existed prior to any attempt by DHHS to recover from a liable tortfeasor. Therefore, except as limited by the Anti-Lien Provision, Ms. Lynne and L.W. did not have a cognizable property interest in the portion of the settlement previously assigned to DHHS.[4] *See Wesley Health Care Ctr., Inc. v. DeBuono*, 244 F.3d 280, 285-86 (2d Cir. 2001) (upholding a District Court's determination that there was no property interest in insurance proceeds if previously assigned to the State pursuant to 42 U.S.C.A § 1396k.)

Additionally, Ms. Lynne and L.W. fail to show why the statutory process that a court determine a reasonable amount to satisfy the

[4] Ms. Lynne and L.W. had previously received just compensation from DHHS for this property interest in the form of DHHS's initial payment of L.W.'s medical expenses.

MaineCare lien, consistent with federal law, does not provide them with sufficient due process. Instead, their argument largely rehashes their Anti-Lien argument, as evidenced by their reliance primarily on cases concerning the Anti-Lien Provision. (Red Br. 21-23.)

Conclusion

For the reasons stated above and in DHHS's principal brief, this Court should vacate the Superior Court's entry of summary judgment in favor of Ms. Lynne and L.W. and remand the matter to the Superior Court with instructions to enter judgment in favor of DHHS.

Respectfully submitted,

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