

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH  
DISTRICT**

**Q.H. c/o A.H. v. Sunshine State Health Plan, Inc.**

No. 4D20-741 · No. No. 4D20-741 · Decided October 7, 2020

**SUMMARY**

The Florida Fourth District Court of Appeal denied a prevailing child's motion for appellate attorney's fees after reversing an agency decision involving Medicaid-related medical necessity and EPSDT benefits. The court held that the agency's conduct did not constitute a gross abuse of discretion, that the cited statutory fee provisions did not apply, and that equitable considerations did not warrant creating an exception to the American rule.

**CASE DETAILS**

|                              |                                                                                                                                                                                                                                        |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | District Court of Appeal of the State of Florida, Fourth District                                                                                                                                                                      |
| <b>WRITING FOR THE COURT</b> | GROSS, J.; CIKLIN, J.; ARTAU, J.                                                                                                                                                                                                       |
| <b>JURISDICTION</b>          | Florida                                                                                                                                                                                                                                |
| <b>DECIDED</b>               | October 7, 2020                                                                                                                                                                                                                        |
| <b>DOCKET</b>                | No. 4D20-741                                                                                                                                                                                                                           |
| <b>DISPOSITION</b>           | other                                                                                                                                                                                                                                  |
| <b>PROCEDURAL POSTURE</b>    | After the court reversed the case on the merits in a separate opinion, the prevailing appellant moved for appellate attorney's fees under sections 120.595(5), 57.105(5), and 57.111, Florida Statutes, and under equitable doctrines. |
| <b>PRECEDENTIAL VALUE</b>    | Published opinion                                                                                                                                                                                                                      |
| <b>PARTIES</b>               | Q.H. c/o A.H., a child v. Sunshine State Health Plan, Inc.                                                                                                                                                                             |

**TOPICS**

remedies   appellate procedure   administrative law   statutory interpretation

**PRACTICE AREAS**

appellate attorney's fees   administrative law   health law   appellate procedure

**QUESTIONS PRESENTED**

1. Whether the prevailing appellant was entitled to appellate attorney's fees under section 120.595(5), Florida Statutes, based on a frivolous, meritless, abusive, or grossly abusive appeal or agency action.
2. Whether section 57.105(5), Florida Statutes, authorized an appellate fee award in this appeal from an administrative proceeding.
3. Whether the appellant qualified as a small business party entitled to fees under section 57.111, Florida Statutes.
4. Whether equitable considerations or an exception to the American rule required an award of appellate attorney's fees.

## **HOLDINGS**

1. The appellant was not entitled to discretionary appellate attorney's fees because AHCA's position was not unjustified and its reliance on published prior-authorization criteria did not constitute a gross abuse of agency discretion.
2. Section 57.105(5) did not apply because this appellate proceeding was not an administrative proceeding under chapter 120 and the judges of the district court were not administrative law judges; the appellant also failed to establish compliance with the statutory and rule-based safe-harbor requirement.
3. The appellant was not entitled to fees under section 57.111 because the child did not meet any statutory definition of a small business party.
4. Equitable considerations, including the parties' financial disparity, did not authorize an appellate fee award because no recognized exception to the American rule applied and the court would not create a broad new exception.

## **KEY QUOTATIONS**

*“Under the American rule, “a court may only award attorney’s fees when such fees are expressly provided for by statute, rule, or contract.”” (at 3)*

*“However, an award of fees under this doctrine “must be based upon an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys’ fees.”” (at 3)*

## **FACTUAL BACKGROUND**

The appeal concerned the interaction between federally authorized benefits and the Agency for Health Care Administration's prior-authorization criteria. Although the merits opinion concluded that AHCA should have taken a more expansive view of medical necessity under the EPSDT, the court found that AHCA's reliance on its published prior-authorization criteria was not a gross abuse of discretion. The appellant also relied on financial disparity and lack of financial means to seek fees under equitable principles.

## **PROCEDURAL HISTORY**

The underlying matter arose from an administrative proceeding before the Florida Agency for Health Care Administration, with lower tribunal case number AHCA 20-FH0016. The Fourth District had reversed the case

on the merits in a separate opinion, and it denied the appellant's subsequent motion for appellate attorney's fees on all asserted grounds.

## DISPOSITION

other

## CASES CITED

- Residential Plaza At Blue Lagoon, Inc. v. Agency for Health Care Admin., 891 So. 2d 604, 607 (Fla. 1st DCA 2005)
- Pro Tech Monitoring, Inc. v. State, Dep't of Corr., 72 So. 3d 277, 282 (Fla. 1st DCA 2011)
- Bane v. Bane, 775 So. 2d 938, 940 (Fla. 2000)
- Reiterer v. Monteil, 98 So. 3d 586, 587 (Fla. 2d DCA 2012)
- Topalli v. Feliciano, 267 So. 3d 513, 518 (Fla. 2d DCA 2019)
- Barbara Moakley v. Sheri Smallwood, Moakley v. Smallwood, 826 So. 2d 221, 226-227 (Fla. 2002)