

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177179
Decision Date:	12/15/2021	Hearing Date:	10/08/2021
Hearing Officer:	Casey Groff	Record Open to:	10/27/2021

Appearance for Appellant:




Appearance for MassHealth:

Elizabeth Landry of the Taunton MEC



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Eligibility; Lien
Decision Date:	12/15/2021	Hearing Date:	10/08/2021
MassHealth's Rep.:	Elizabeth Landry	Appellant's Rep.:	
Hearing Location:	Remote	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated June 10, 2021 MassHealth informed Appellant that it intended to place a lien on real estate owned by Appellant because MassHealth determined that she could not reasonably be expected to be discharged from the nursing facility and she did not have a qualifying relative living in the property. See Exhibit 1, p. 2 and 130 CMR 515.012(A). Appellant, through her health care proxy (HCP), filed this appeal in a timely manner on September 20, 2021. See id., p. 4; see also 130 CMR 610.015(B). Challenging the placement of a lien on a member's property is valid grounds for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth informed Appellant that it intended to place a lien against Appellant's former home because MassHealth determined that she could not reasonably be expected to be discharged from the nursing facility and that she did not have a qualifying relative living in the home.

Issue

The appeal issue is whether MassHealth was correct in its decision to place a lien on Appellant's former home based on its determination that she could not reasonably be expected to be discharged from the nursing facility and that she did not have a qualifying relative living in the property.

Summary of Evidence

A MassHealth representative appeared at the hearing by telephone and testified as follows: Appellant is a MassHealth member over the age of 65 and has resided in a long-term care facility since 2015. Prior to her admission, Appellant and her husband lived at a property (“the home”) located in Massachusetts. The deed is solely in the Appellant’s name; not her husband’s name. Because Appellant’s spouse continued to live in the home after her 2015 admission, MassHealth did not lien the property. In 2021, Appellant’s husband was admitted to a long-term care facility and no longer a resided in the home. Accordingly, through a letter dated June 10, 2021, MassHealth informed Appellant that it intended to place a lien against the property pursuant to 130 CMR 515.012(A). See Exh. 1, p. 2. Because Appellant appealed the notice of intended action, MassHealth has not yet attached the lien to the property.

Appellant’s representative appeared at hearing by telephone and stated that while she agreed with the facts as presented the MassHealth representative, the home should not be subject to a lien because Appellant’s daughter satisfied all criteria to meet the “caretaker-child” exception to real estate lien placements. Specifically, Appellant and her spouse have a daughter that continues to reside in the home and has for her entire life. The daughter was the primary caretaker for both parents prior to their respective nursing home admissions. The Appellant’s representative requested that the hearing record be left open for an additional two weeks to submit proof that the daughter met all criteria to qualify as a caretaker-child to defer placement of the lien.

In response, the MassHealth representative clarified that because the home is solely in Appellant’s name, she would need to produce proof that the daughter acted as Appellant’s caretaker for the two years prior to *Appellant’s* nursing home admission (not her fathers), as well as proof that she lived in the residence during this time.

Appellant’s request to keep the record open was granted and she was given until October 22, 2021 to submit the required verification to show the property was exempt from a lien. See Ex. 4, p. 3. MassHealth was given until October 27, 2021 to review any/all information submitted and provide a response. Id.

On October 25, 2021, the MassHealth representative informed the parties that it had not received any of the required verifications. See Exh. 4, p. 3. In a final response, Appellant’s representative explained that despite several attempts, she was unable to obtain a letter indicating the daughter was Appellant’s primary caregiver preceding her 2015 admission. The representative included a copy of the daughter’s birth certificate, voter registration (indicating she resided at the home since 2010), and a physician letter dated from 2021 indicating the daughter was the caretaker for her father (Appellant’s spouse).

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. Appellant is a MassHealth member over the age of 65 and has resided in a long-term care facility since 2015.
2. Prior to her admission, Appellant and her husband lived at a property (“the home”) located in Massachusetts.
3. The deed to the property is solely in the Appellant’s name.
4. Because Appellant’s spouse continued to live in the marital home after her admission, MassHealth did not place a real estate lien on the property.
5. In 2021, Appellant’s husband was admitted to a long-term care facility and no longer resided in the home.
6. Through a letter dated June 10, 2021, MassHealth informed Appellant that it intended to place a lien against the property pursuant to 130 CMR 515.012(A).
7. Because Appellant appealed the notice of intended action, MassHealth had not attached the lien to the property as of the hearing date.
8. Appellant has a daughter who currently lives in the home.
9. Appellant was granted a two-week post-hearing period to submit verification that her daughter acted as her caretaker in the two-years prior to 2015 nursing home admission.
10. Appellant did not submit proof of a caretaker child within the required time frame.

Analysis and Conclusions of Law

This appeal addresses whether MassHealth appropriately notified Appellant, a nursing facility resident, of its intent to place a lien on her home. Pursuant to regulation, MassHealth “will place a lien before the death of a member against any real estate in which the member has a legal interest.”¹ See 130 CMR 520.007(G)(12). MassHealth will only place the lien, however, if all the conditions of 130 CMR 515.012: *Real Estate Liens* are met. *Id.* This regulation, provides, in relevant part, the following:

515.012: Real Estate Liens

(A) *Liens.* A real estate lien enables the MassHealth agency to recover the cost of medical benefits paid or to be paid on behalf of a member. ***Before the death of a***

¹ Although a member’s principle place of residence (home) is considered a “noncountable asset” for purposes of determining his/her financial eligibility; the home is nevertheless, subject to the lien rules at 130 CMR 515.012.

member, the MassHealth agency will place a lien against any property in which the member has a legal interest, subject to the following conditions:

(1) per court order or judgment; or

(2) without a court order or judgment, if all of the following requirements are met:

(a) the member is an inpatient receiving long-term or chronic care in a nursing facility or other medical institution;

(b) none of the following relatives lives in the property:

1. a spouse;

2. a child younger than 21 years old, or a blind or permanently and totally disabled child; or

3. a sibling who has a legal interest in the property and has been living in the house for at least one year before the member's admission to the medical institution;

(c) the MassHealth agency determines that the member cannot reasonably be expected to be discharged from the medical institution and return home; and

(d) the member has received notice of the MassHealth determination that the above conditions have been met and that a lien will be placed. The notice includes the member's right to a fair hearing

(D) Repayment Deferred.

(1) In the case of a lien on a member's home, repayment under 130 CMR 515.012 is not required while any of the following relatives are still lawfully living in the property:

...

(b) a son or daughter who

1. has been living in the property for at least two years immediately before the member was admitted to a nursing facility or other medical institution;

2. establishes to the satisfaction of the MassHealth agency that he or she provided care that permitted the parent to live at home during the two-year period before institutionalization; and

3. has lived lawfully in the property on a continual basis while the parent has been in the institution.

(2) Repayment from the estate of a member that would otherwise be recoverable under any regulation is still required even if the relatives described in 130 CMR 515.012(D) are still living in the property.

See 130 CMR 515.012 (emphasis added).

There is no dispute that Appellant is the owner of the real estate property (her home) at issue in this appeal. In 2015, after Appellant was admitted to the nursing home, her husband continued to reside in the home. Pursuant to 130 CMR 515.012(A)(2)(b)(1), the husband's presence in the home effectively hindered MassHealth's ability to lien the property at that time. However, in

2021, Appellant's husband was admitted to a nursing facility. Because Appellant no longer had a qualifying relative living in the home, as specified under subsection (A)(2)(b) above, the property was subject MassHealth's real estate lien rules. See id. MassHealth therefore appropriately issued a June 10, 2021 notice of its intent to lien the property. Through the fair hearing process, Appellant argued that she was subject to an exemption, under subsection (D), above, which defers repayment obligations when a qualifying "caretaker/child" continues to live in the home. As such, Appellant requested, and was granted, a post-hearing period to submit verification demonstrating that Appellant's daughter lived in the home, and acted as Appellant's caretaker, for the two-years preceding her 2015 admission. Despite the additional time, Appellant was unable to submit the requested proof that a caretaker/child relationship existed. Appellant did not meet her burden in proving that MassHealth's erred in issuing its June 10, 2021 notice to lien the property.

The appeal is DENIED.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Casey Groff
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

[REDACTED]