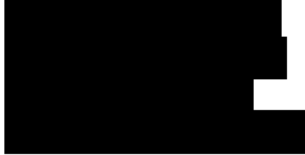


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2200329
Decision Date:	2/17/2022	Hearing Date:	02/08/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:



Appearance for MassHealth:

Via telephone:

Elizabeth Rodriguez, Tewksbury 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:	Approved	Issue:	Lien
Decision Date:	2/17/2022	Hearing Date:	02/08/2022
MassHealth's Rep.:	Elizabeth Rodriguez	Appellant's Rep.:	Pro se [REDACTED] OA
Hearing Location:	Tewksbury MassHealth Enrollment Center	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 December 20, 2021, MassHealth notified the appellant of the agency's intent to place a lien on property he owns (Exhibit 1). The appellant filed this appeal in a timely manner on January 13, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant of the agency's intent to place a lien on property he owns.

Issue

The appeal issue is whether MassHealth is entitled to place a lien on the appellant's property.

Summary of Evidence

A long-term care eligibility worker from the Tewksbury MassHealth Enrollment Center appeared at hearing via telephone and testified as follows: the appellant was approved for long-term care coverage on July 27, 2021 with a start date of April 1, 2021. His primary residence was considered non-countable because he intended to return home. He owns the property, a condominium, with his partner. MassHealth determined the property was subject to a lien because the joint owner was not a legal spouse, sibling, or child. The MassHealth representative testified that the appellant, who is [REDACTED] years-old, entered the facility on [REDACTED], but he intends to return home.

The appellant and his partner, who is also is power of attorney, appeared via telephone and testified as follows: they are partners, but not legally married. His partner lives in the home which they own as joint tenants. He plans to return home, although it has not been decided when he can be discharged. He is waiting to receive some physical therapy, which he has had trouble getting covered by his insurance. The appellant's partner is 73-years-old and works part-time. She consults as an archeologist and her paychecks do not come on a regular basis. While the appellant is in the facility, the appellant's partner has had to pay for the appellant's half of the condominium expenses while his income goes to the nursing facility. The appellant's partner was informed by a different MassHealth worker that a lien was already placed on the property on January 25, 2022, despite the appeal being in progress. She needs to get a line of credit on the condominium in order to keep up payments on the condominium while the appellant is in the facility. She is concerned that she will not be able to get that line of credit with the lien on the property. The lien will be an undue hardship on her and the appellant.

The MassHealth representative responded that her records show the lien was completed on December 20, 2021. Her records also show that the appellant still intends to return home. She repeated that pursuant to MassHealth regulations, a lien can be placed if a spouse, child, or sibling do not live in the property and the appellant is not legally married to his partner.

Findings of Fact

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

1. The appellant, who is [REDACTED]-years-old, was admitted to the facility on [REDACTED] and approved for long-term care on July 27, 2021, with a start date of April 1, 2021 (Testimony and Exhibit 4).
2. The appellant owns a condominium with his partner as joint tenants. His partner currently resides in the condominium. (Testimony).
3. The appellant and his partner are not married (Testimony).
4. The appellant has no children who live in the home. The appellant has no siblings with an ownership interest in the property. (Testimony).

5. The appellant intends to return home (Testimony).
6. On December 20, 2021, MassHealth filed a notice of intent to lien the property (Exhibit 1).
7. On January 13, 2022, the appellant filed a timely appeal of the notice (Exhibit 2).

Analysis and Conclusions of Law

Under 130 CMR 515.012, MassHealth may place a lien on a member's property to recover the cost of medical benefits paid on his or her behalf. The regulations governing liens provide as follows:

(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 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:**

- i. a spouse;

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

- iii. 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.

(B) Recovery. If property against which the MassHealth agency has placed a lien under 130 CMR 515.012(A) is sold during the member's lifetime, the MassHealth agency may recover all payment for services provided on or after April 1, 1995. This provision does not limit the MassHealth agency's ability to recover from the member's estate in accordance with 130 CMR 515.011.

(C) Exception. No recovery for nursing facility or other long-term-care services may be made under 130 CMR 515.012(B) if the member

- (1) was institutionalized;
- (2) notified the MassHealth agency that he or she had no intention of returning home; and
- (3) on the date of admission to a long-term-care institution had long-term-care insurance that, when purchased, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

(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:

- (a) a sibling who has been living in the property for at least one year before the member's admission to the nursing facility or other medical institution; or
- (b) a son or daughter who
 - i. 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;
 - ii. 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
 - iii. 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.

(E) Dissolution. The MassHealth agency will discharge a lien placed against property under 130 CMR 515.012(A) if the member is released from the medical institution and returns home.

(F) Verification. The applicant or member must cooperate in providing verification as to whether the conditions under 130 CMR 515.012(A) exist, and in providing any information necessary for the MassHealth agency to place a lien.

(G) Recording Fee. The MassHealth agency is not required to pay a recording fee for filing a notice of lien or encumbrance, or for a release or discharge of a lien or encumbrance under 130 CMR 515.012.

(Emphasis added).

MassHealth notified the appellant of its intent to place a lien on property that he owns as joint tenants with his partner. He and his partner are not married. The appellant is a resident of a long-term care facility and neither a spouse, child, nor sibling with a legal interest in the property lives in the house. It is not clear if or on what basis MassHealth determined that the appellant cannot reasonably be expected to be discharged from the nursing facility to return home. To the contrary, the appellant, his partner, and MassHealth all testified that the appellant intends to return home. Under these circumstances, the requirements for placement of a lien have **not** been met. The regulation insulates property from lien only when a spouse, a minor or disabled child, or a sibling with a legal interest in the property (and who has lived in the house for at least one year prior to admission) lives there **and** the MassHealth agency determines that the member cannot reasonably be expected to be discharged from the medical institution and return home. According to MassHealth's testimony, the appellant intends to return home and it has not determined he cannot be discharged.

For these reasons, MassHealth's notice was in error and the appeal is approved.

Order for MassHealth

Rescind the notice dated December 20, 2021. If the lien has already been placed, release the lien.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957