

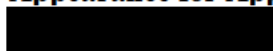
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|-----------------|-----------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2201543 |
| Decision Date: | 5/10/2022 | Hearing Date: | 04/14/2022 |
| Hearing Officer: | Thomas J. Goode | | |

Appearance for Appellant:



Appearance for MassHealth:

Monique Garreffi, Lien Coordinator



*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: | 130 CMR 515.012(A) |
| Decision Date: | 5/10/2022 | Hearing Date: | 04/14/2022 |
| MassHealth's Rep.: | Monique Garreffo | Appellant's Rep.: | |
| Hearing Location: | Remote | | |

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 January 25, 2022, MassHealth notified Appellant of its intent to place a lien on property owned by Appellant (130 CMR 515.012(A) and Exhibit 1). Appellant filed this appeal in a timely manner on February 25, 2022 (130 CMR 610.015(B) and Exhibit 2). Notice of intent to place a lien is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified Appellant of its intent to place a lien on property owned by Appellant.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 515.012(A), in notifying Appellant of its intent to place a lien on property owned by Appellant.

Summary of Evidence

The MassHealth representative testified that Appellant was admitted to a skilled nursing facility in July 2020 and continues to reside at the same skilled nursing facility with no reasonable expectation of being discharged home. The MassHealth representative testified that Appellant jointly owns with the community spouse a parcel of land consisting of approximately 2.5 acres located adjacent to the

family home where the community spouse currently resides. The parcel is a separate buildable parcel and was purchased by Appellant and the community spouse in 1978. The MassHealth representative testified that according to Zillow estimates the parcel is valued at \$268,000, with one-half of the value attributable to Appellant (Exhibit 4).¹ As there is no evidence of circumstances precluding placement of a lien outlined in 130 CMR 515.012(A), MassHealth issued notice of its intent to place a lien on the property. The MassHealth representative explained that the lien would result in recovery of nursing facility expenses in the event the property is sold during Appellant's lifetime and would dissolve upon Appellant's death.

Appellant's attorney disagreed with the Zillow valuation, and stated that the only structure on the parcel is a garage which should be exempted as part of the family home where the community spouse resides.

Findings of Fact

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

1. Appellant was admitted to a skilled nursing facility in July 2020 and continues to reside at the same skilled nursing facility with no reasonable expectation of being discharged home.
2. Appellant jointly owns with the community spouse a separate parcel of land consisting of approximately 2.5 acres located adjacent to the family home where the community spouse currently resides.
3. Through a notice dated January 25, 2022, MassHealth notified Appellant of its intent to place a lien on property owned by Appellant.
4. No one lives in the property.

Analysis and Conclusions of Law

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 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;

¹ MassHealth testified to a Zillow value, but did not submit evidence of the Zillow valuation into the hearing record.

- (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.

Appellant was admitted to a skilled nursing facility in July 2020 and continues to reside at the same skilled nursing facility with no reasonable expectation of being discharged home. Appellant jointly owns with the community spouse a separate parcel of land consisting of approximately 2.5 acres located adjacent to the family home where the community spouse currently resides (Exhibit 4). No one lives in the property which is held jointly by Appellant and the community spouse and is a separate parcel from the family home with ½ of the value of the property attributable to Appellant. There is no evidence that any of the conditions precluding placement of a lien have been met; and MassHealth issued proper notice of its intent to place a lien (Exhibit 1). Therefore, the property is subject to a lien.²

The appeal is DENIED.

Order for MassHealth

None.

² Although Appellant disagreed with the valuation of the property, she offered no counter valuation. Regardless, the valuation of the property does not determine MassHealth's ability to place a lien and would become an issue only if the property is sold during Appellant's lifetime.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]