

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied-in-part; Dismissed-in-part	Appeal Number:	2201706
Decision Date:	6/16/2022	Hearing Date:	04/07/2022
Hearing Officer:	Casey Groff	Record Open to:	04/22/2022

Appearance for Appellant:



Appearance for MassHealth:
Michelle Araujo, 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-in-part; Dismissed-in-part	Issue:	Real Estate Liens
Decision Date:	6/16/2022	Hearing Date:	04/07/2022
MassHealth's Rep.:	Michelle Araujo	Appellant's Rep.:	
Hearing Location:	Board of Hearings (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 notices dated February 25, 2022, MassHealth informed Appellant of its intent to place liens on two properties owned by Appellant. See Exh. 1, pp. 2-4; 130 CMR 515.012(A). On March 7, 2022, Appellant, through her power of attorney (POA), filed a timely appeal of the anticipated action. See Exh. 1, p. 1 and 130 CMR 610.015(B). Notification of an intent to place a lien on a member's property is valid grounds for appeal. See 130 CMR 610.032(7).¹

Action Taken by MassHealth

MassHealth notified Appellant that it intended to place a lien on her properties.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 515.012, in determining that it intended to place a lien on Appellant's properties.

¹ MassHealth fair hearing regulations at 130 CMR 610.032(A) state that "Applicants and members have a right to request a fair hearing for any of the following reasons... (7) any condition of eligibility imposed by the MassHealth agency for assistance or receipt of assistance that is not authorized by federal or state law or regulations.."

Summary of Evidence

A MassHealth representative from the Taunton MassHealth Enrollment Center appeared at the hearing by telephone and testified as follows: On [REDACTED], Appellant, who was over the age of 65, entered a nursing home and was initially coded for “short-term” care. On September 21, 2021, MassHealth received a long-term care conversion application from Appellant seeking coverage for long-term care services effective June 19, 2021. During the application process, Appellant verified that she owned two adjacent properties located in Massachusetts (collectively “the properties”).² She also verified that she established a long-term care insurance policy in 1995, which provides co-insurance benefits while she resides in the nursing facility. On February 15, 2022, MassHealth notified Appellant that it approved her application for long-term care coverage. Additionally, through two letters dated February 25, 2022, MassHealth notified Appellant of its intent to place a lien the properties. On April 4, 2022 MassHealth, through its specialized Project Lien Unit, secured liens on the properties, which were recorded in the Registry of Deeds. See Exh. 4, p. 2.

The MassHealth representative explained that 130 CMR 515.012(A) of MassHealth regulations permit MassHealth to place a lien against *any* property in which a member has legal interest, subject to the conditions that the member is in an inpatient in a long-term care facility, there are no qualifying family members living in the home, and after notice has been sent to the member. Because all conditions have been met, MassHealth was permitted to lien the properties.

The MassHealth representative further explained that there is a regulatory exception that limits the amount MassHealth may recover from the lien *if the member* has a qualifying long-term care (LTC) insurance; however, this exception does not impact MassHealth’s ability to initiate and secure the lien. The MassHealth representative noted that while Appellant’s LTC insurance policy appeared to satisfy subsection (C) of 515.012; such a determination was not a prerequisite to placing a lien. Because no recovery action has occurred, MassHealth could not, at this time, provide assurance that it would not seek to recoup any amounts if the property were sold. The MassHealth eligibility representative explained that while possessing a LTC insurance will exempt MassHealth from collecting on room and board and long-term care services, MassHealth may still collect for incidental medical costs, such as ambulance services, specialists, hospice care, and other services unrelated to long-term care.

Through a record open period, MassHealth provided additional information regarding MassHealth’s recovery process, which is typically initiated when the member, in preparing to sell their property, requests MassHealth remove the lien and/or provide a “pay-off” statement. When this occurs, a case specialist is assigned and will provide a statement showing the medical claim lines and the amount the member owes the state, if any. If the repayment amount is disputed, the member can object by providing a letter to Estate Recovery which is then escalated

² In its initial eligibility determination, on November 26, 2021, MassHealth appraised the properties as countable assets and denied Appellant’s LTC application due to having assets more than the allowable amount. Through a fair hearing, Appellant successfully appealed the denial (Appeal No. 2179509) on grounds that the properties “appertained” to her principal residence and were therefore noncountable.

to EOHHS Legal to seek resolution. There are also hardship forms available. See Exh. 8.

An attorney appeared at the hearing on behalf of Appellant. Prior to the hearing, the attorney submitted a brief with documents into the hearing record. See Exhs. 4-5. Appellant's attorney did not dispute the essential facts and timeline of events as recited by MassHealth. Rather, Appellant argued that MassHealth must, as a prerequisite to placing a lien, determine whether a member meets the exception for recovery identified in subsection (C) of 515.012. It is arbitrary for MassHealth to secure a lien on property if it cannot recover under the LTC insurance exception. Appellant's attorney explained the intent of this appeal was to obtain a MassHealth determination "that [Appellant's] long-term care insurance policy meets the minimum requirements of 211 CMR 65.05 in effect at the time of purchase, thereby qualifying for an exemption from recovery by MassHealth pursuant to 130 CMR 515.011(B)(1)." See Exh. 4, p. 2. Appellant further argued that because she did in fact have qualifying LTC insurance, MassHealth erred in placing the lien. The attorney reasoned that having a lien on the property presents logistical complications if Appellant was to sell the property. There would be insufficient turn-around between obtaining the title report and closing to resolve a potential dispute with MassHealth regarding the correct recovery amount. In support of her argument Appellant submitting a BOH fair hearing decision (Appeal No. 1815136), which overturned a MassHealth decision to lien a member's property because the member had a LTC insurance policy which satisfied the criteria in §(C) of 130 CMR 515.012.

Findings of Fact

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

1. On [REDACTED], Appellant, who was over the age of 65, entered a nursing home and was initially coded for "short-term" care.
2. On September 21, 2021, MassHealth received a long-term care conversion application from Appellant seeking coverage for long-term care services effective June 19, 2021.
3. In the application Appellant indicated she did not intend to return home.
4. During the application process, Appellant verified that she owned two adjacent properties located in Massachusetts.
5. She also verified that she established a long-term care insurance policy in 1995, which provides co-insurance benefits while she resides in the nursing facility.
6. On February 15, 2022, MassHealth notified Appellant that it approved her application for long-term care coverage.
7. Additionally, through two letters dated February 25, 2022, MassHealth notified Appellant of its intent to place a lien the properties.

Analysis and Conclusions of Law

At issue in this appeal, is whether MassHealth appropriately placed a lien on two adjacent properties owned by the Appellant without first determining whether Appellant's long-term care insurance policy exempts her from recovery actions under 130 CMR 515.012(C). MassHealth's regulations governing placement of real estate liens to recover medical costs incurred by a member, provide 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 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.

(B) **Recovery.** If property against which the MassHealth agency has placed a lien under 130 CMR 515.012(A) is sold, 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, or at any time thereafter, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR

130 CMR 515.012 (emphasis added).

In the present case, MassHealth appropriately secured a lien under the provisions of 130 CMR 515.012(A)(2), above. A basic reading of this regulation suggests that §(A) governs the conditions that must exist for MassHealth to secure a lien on a member's property. Here, Appellant's property meets all those conditions. The properties are owned by Appellant. Appellant is a resident of a long-term care facility. There is no evidence to suggest that any qualifying relatives live in the properties. Finally, the parties agree that Appellant cannot reasonably be expected, nor does she intend, to return home. Thus, MassHealth appropriately notified Appellant on February 25, 2022 of its intent to secure a lien on her properties. Issuance of the notices satisfied the final criteria for MassHealth to place the liens. Id.

The following sections of 130 CMR 515.012 address the issue of recovery; specifically, what amounts MassHealth may recoup *when the property is sold*. Section (B) provides the general rule that MassHealth may "recover all payment for services..." that were rendered to the member. Section (C) – which Appellant highlights in this appeal – limits the amount MassHealth may *recover* under §(B) – at the time the property is sold. Specifically, §(C) prohibits MassHealth from recovering "*nursing-facility or other long-term care services*" when the institutionalized member possesses a qualifying long-term care insurance policy. A plain reading of the regulation is consistent with MassHealth's testimony at hearing that it may place a lien on property regardless of whether a member meets all conditions under §(C). The member may still incur medical expenses unrelated to long-term care such as encounters with specialty providers, hospital services, ambulance services, and hospice care – which MassHealth is entitled to recover when the property is sold.⁴ Because this appeal only addresses the issue of whether MassHealth appropriately placed a lien on the properties in accordance with (A) above, it is immaterial to address whether Appellant's LTC policy satisfies the exception in §(C).

This appeal is DENIED insofar as Appellant did not demonstrate MassHealth erred in notifying her of its intent to secure a lien on her properties.

³ Pursuant to 130 CMR 515.014, states that "for purposes of the financial eligibility exemption under....130 CMR 515.012(C), concerning repayment of assistance provided for nursing facility and other long-term-care services...a long-term care insurance policy must provide certain minimum coverage requirements as Determined by the Division of Insurance." Subsection (B) of this regulation states that "Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions All policies issued prior to March 15, 1999, need only comply with the minimum standards of 211 CMR 65.05: *Minimum Standards for Individual Policies*, and the limitations and exclusion provision of 211 CMR 65.06: *Mandatory Benefit Offers for Individual Policies*, which were effective from April 1, 1989, through September 2, 1999."

⁴ Appellant's argument that this process would create logistical complications at the time of closing, is premised on the hypothetical scenario that MassHealth would seek to recover exempted medical costs. While such a scenario could indeed occur, the argument does not have any bearing on the issue on appeal – i.e. whether MassHealth appropriately notified Appellant of its intent to place a lien on the properties. Additionally, Appellant's reliance on a previous fair hearing decision which, she argues, supports her argument, does not carry any precedential value and is not sufficient grounds to reverse the MassHealth action.

This appeal is DISMISSED with respect to Appellant argument that MassHealth failed to determine whether Appellant's long-term care policy satisfies the exception in §(C), above. Because the property has not been sold and MassHealth has not taken any action to recover from the lien, such a determination is premature and not valid grounds for appeal.

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

Appellant Attorney: [REDACTED]