

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2203004

Decision Date: 6/22/2022

Hearing Date: 06/01/2022

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:



Appearance for MassHealth:

Katie LaDuke, Springfield Intake Unit



*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:	Long Term Care Lien Placement
Decision Date:	6/22/2022	Hearing Date:	06/01/2022
MassHealth's Rep.:	Katie LaDuke	Appellant's Rep.:	Son
Hearing Location:	Springfield MassHealth Enrollment Center		

Jurisdiction

Through a notice dated 03/28/2022, MassHealth informed the appellant of its intention to place a lien on her property located at 380 Hawley Rd., Hawley, MA 01339 ("subject property") (130 CMR 515.012(A); Exhibit 1). The appellant appealed this action timely on 03/28/2022 (130 CMR 610.015(B); Exhibit 2). Issuing a notice of intent to place a lien constitutes valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

The MassHealth issued a notice of intent to place a lien on the appellant's subject property, real estate.

Issue

Is the MassHealth correct, pursuant to 130 CMR 515.012(A) that a lien may be placed on her real estate?

Summary of Evidence

The MassHealth representative testified the appellant is a resident of a skilled nursing facility and has been approved for long term care ("LTC") benefits. During the review of the appellant's application and supporting materials, MassHealth recognized that the appellant has a legal interest in real property located in Hawley, Massachusetts. According to a quitclaim deed filed with the registry of deeds, the subject property was

transferred by the appellant, as surviving joint tenant, to her son and daughter in law on 10/26/2012. On the same quitclaim deed, the appellant retained a life estate in the property (see Franklin County Registry of Deeds, Book 6278, page 303; Exhibit 4). The MassHealth representative testified that the lien will be placed on the subject property but will dissolve in the event the appellant returns home or dies while in the facility. If the property is sold while the appellant is a resident of the skilled nursing facility, MassHealth has the right to recover the cost of her care up to the point of her financial interest in the subject property (Exhibit 1).

The appellant was represented by her son who was represented by an attorney. The son testified and the attorney confirmed that the appellant is a resident of a skilled nursing facility, that there is no spouse living in the home, no child under 21 or who is disabled or blind, and no sibling to the appellant living in the home. They also confirmed that the home was transferred in 2012, while the appellant retained a life estate. The attorney expressed a concern about having a lien on the property if the son (owner of the subject property) should seek to refinance the mortgage on the property.

The MassHealth representative referred the attorney to the MassHealth Estate Recovery Unit.

Findings of Fact

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

1. The appellant, a nursing home resident, applied for, and was approved for, MassHealth LTC benefits (Testimony).
2. The appellant owned real estate located in Hawley, Massachusetts ("subject property") (Testimony; Exhibit 4).
3. The appellant continues to reside in the skilled nursing facility (Testimony).
4. In 2012, the appellant transferred the subject property to her son and daughter in law, reserving a life estate (Testimony; Exhibit 4).
5. There is no court order or judgment preventing MassHealth from placing a lien on the appellant's interest in the subject property (Testimony).
6. The appellant does not have a spouse living in the subject property (Testimony).
7. The appellant does not have a child under 21 who lives in the subject property (Testimony).
8. The appellant does not have a disabled or blind child who lives in the subject

property (Testimony).

9. The appellant does not have a sibling who lives in the subject property (Testimony).

Analysis and Conclusions of Law

The MassHealth notified the appellant of its intention to place a lien on her property. The regulation regarding real estate liens is found at 130 CMR 515.012, which states:

(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 whose coverage 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.

The appellant resides in a skilled nursing facility and was approved for MassHealth long term care benefits. The appellant was once the owner of the subject property; however, in 2012, the appellant transferred the subject property to her son and daughter in law, reserving a life estate.

The appellant's son and his attorney were concerned about his ability to obtain a refinance loan on the subject property if MassHealth has placed a lien on the appellant's interest. However, the son confirmed that none of the exceptions in the regulation exist (e.g., spouse, disabled child, or sibling live in the subject property). The regulations make no exception to placement of the lien for the purposes of the current owner's desire to refinance the property. Accordingly, MassHealth properly notified the appellant of its intention to place a lien on the subject property. This appeal is therefore denied.

Order for MassHealth

Proceed with placement of the intended lien.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center,
88 Industry Avenue, Springfield, MA 01104

Appellant Representative:

