

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2208550
Decision Date:	2/7/2023	Hearing Date:	12/16/2022
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:



Appearance for MassHealth:

Via telephone
Jernice Diaz



*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:	Real Estate Lien
Decision Date:	2/7/2023	Hearing Date:	12/16/2022
MassHealth's Rep.:	Jernice Diaz	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center Room 3 (remote by telephone)	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 notice¹ issued on November 8, 2022, MassHealth notified the Appellant of its intent to place a lien on a piece of real estate property in Berkshire County because MassHealth determined that the Appellant had an ownership in the property. (See, 130 CMR 515.012(A) and Exhibit 1). The Appellant filed this appeal in a timely manner on November 16, 2022. (See, 130 CMR 610.015(B) and Exhibit 2). Dispute as to placement of a lien is valid grounds for appeal. (See, 130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the Appellant of its intent to place a lien on real estate property.

Issue

The appeal issue is whether MassHealth was correct in notifying the Appellant of an intent to place a lien onto her property.

¹ The notice itself was not dated. Upon inquiry at the hearing, the MassHealth representative responded that notice was issued on November 8, 2022.

Summary of Evidence

The MassHealth representative appeared at the hearing vis telephone and testified as follows: the Appellant was admitted to a nursing facility on [REDACTED] and submitted a long-term care application on February 10, 2022. MassHealth approved said application in March of 2022. At that time, MassHealth received all documentation to confirm a caretaker child resided in the property at issue. (Exhibit 4). However, there was an issue with the Power of Attorney documentation so MassHealth deemed the property inaccessible to the Appellant. (Exhibit 3). The MassHealth representative further testified that on September 16, 2022, MassHealth received a long-term care monitoring update which showed a mortgage from the Appellant and caretaker child to the caretaker child's sister and brother in-law in the amount of \$ 207,500.00. (Exhibit 7). The MassHealth lien department noted that the deed will remain the same with the Appellant and caretaker child's names, who own the property jointly. Thus, MassHealth issued the Appellant a notice of intent to place a lien in November of 2022 because the property is still under the Appellant's name and was not transferred over solely to the caretaker child. MassHealth also questioned the loan amount, specifically, what the loan was used for and how it was spent. To this point, the MassHealth representative testified that she spoke to the Appellant's representative prior to the hearing and he sent her the pertinent promissory note, payoff, mortgage and discharge. (Exhibits 6-9)

The Appellant's representative appeared at the hearing via telephone and testified as follows: MassHealth established that the caregiver child grew up in the property at issue and resided with the Appellant. Moreover, the caregiver child provided care to the Appellant for years before the Appellant required long-term care in a nursing facility due to dementia progressing. As to the Power of Attorney documents at issue, the Appellant's representative explained that when MassHealth requested the property to be transferred solely to the caretaker child, the documents did not allow for self-dealing. Therefore, the caretaker child did not have the authority to convey the property to herself. The Appellant's representative testified that the caretaker child may be able to convey Power of Attorney to her sibling and then have the property conveyed back to her so that said property is solely in her name, however, he would have to review the documentation first in order to ascertain whether it would be considered a gift in which fair market value was received. With respect to the promissory note, the Appellant's representative testified that there was a reverse mortgage on the property and when the caretaker child's sibling's name was added to the deed, the bank considered this a violation. Further, when the Appellant entered into a nursing facility and no longer resided in the property, the loan amounts became payable. Because neither the Appellant nor the caretaker child possessed the funds to pay the mortgages off, the caretaker child began receiving letters of foreclosure. As a result thereof, the caretaker child's sister paid off both mortgages and secured the debt by filing a promissory note and mortgage. (Exhibits 7 and 8). The Appellant's representative explained that the promissory note included the costs to pay off the recording, attorneys fees and roof repair to the property at issue. The Appellant's representative testified that his position is that the assets still remain inaccessible and therefore it would not be equitable to place a lien on the Appellant's property because the caregiver child needs a place to live.

Findings of Fact

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

1. The Appellant was admitted to a nursing facility in [REDACTED] and submitted an application to MassHealth for long-term care on February 10, 2022.
2. MassHealth approved the application in March of 2022.
3. The Appellant owns property with her caretaker child as joint tenants.
4. MassHealth received documentation confirming a caretaker child resided at the property with the Appellant.
5. On September 16, 2022, MassHealth received a long-term care monitoring update showing a mortgage from the Appellant and caretaker child to the caretaker child's sister and brother-in-law.
6. The MassHealth Lien Department noted that the deed to the property at issue will remain the same with the Appellant and caretaker child's names.
7. In November of 2022, MassHealth issued a notice of intent to place a lien on the Appellant's former residence.

Analysis and Conclusions of Law

Regulation 130 CMR 515.012: Real Estate Liens describes the following:

- (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 conditions 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 a 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 anytime thereafter, 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 a nursing facility or other medical institution; or
 - (b) a son or daughter who
 1. has been living in the property for at least two years immediately before the member's admission to the 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.
- (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.

Pursuant to the above regulation, MassHealth will place a lien against any property in which a MassHealth member has a legal interest unless there is a court order or judgment, or unless any of the following are living in the property: a spouse, a child under age 21, a blind or permanently and totally disabled child, or a sibling who has a legal interest in the property. In this case, the Appellant owns the real estate property on which MassHealth intends to place the lien and none of the above-listed individuals live in the property. Accordingly, all of the conditions contained within 130 CMR 515.012(A) have been met and therefore MassHealth can place the lien pursuant to 130 CMR 515.012(A).

The Appellant's representative argues that the Appellant's daughter is a caretaker child who resides at the property thus it would not be equitable to place a lien on said property because the caretaker child needs a place to live. However, the caretaker child distinction does not exempt the property from a MassHealth lien, rather it allows for repayment to be deferred so long as the child is living in the home. (See, 130 CMR 515.012(D)).

Indeed, 130 CMR 515.012(D)(6) states as follows:

520.019(D) Permissible Transfers: The MassHealth agency considers the following transfers permissible. Transfer of resources made for the sole benefit of a particular person must be in accordance with federal law...

- (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:
 - (a) the spouse;
 - (b) the nursing facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled;
 - (c) the nursing facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing facility resident's home for at least one year immediately before the date of the nursing facility resident's admission to the nursing facility; or
 - (d) the nursing facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing facility resident's home for at least two years immediately before the date of the nursing facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

130 CMR 520.019(D)(6).

In the present case, there is no dispute that the Appellant's daughter meets the criteria for a caretaker child. The issue here is whether the establishment of a caretaker child exempts MassHealth to place a lien onto the Appellant's real estate property. As stated above, the caretaker child distinction does not

exempt the property from a MassHealth lien. Rather, pursuant to 130 CMR 515.012(D), it allows for repayment to be deferred so long as the child is living in the home. The Appellant's representative testified that MassHealth explained one potential resolution is to transfer the property solely in the caretaker child's name. As of the date of the hearing, said transfer has not occurred. Therefore, this 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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

[REDACTED]