

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2209141
Decision Date:	4/11/2023	Hearing Date:	01/10/2023
Hearing Officer:	Kimberly Scanlon	Record Open to:	02/07/2023

Appearance for Appellant:
Via telephone



Appearance for MassHealth:
Via telephone
John Keefe



*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:	Dismissed	Issue:	Real Estate Lien
Decision Date:	4/11/2023	Hearing Date:	01/10/2023
MassHealth's Rep.:	John Keefe	Appellant's Rep.:	<i>Pro se</i> ¹
Hearing Location:	Tewksbury MassHealth Enrollment Center Room 1 (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 a notice dated November 7, 2022, MassHealth notified the Appellant of its intent to place a lien on a piece of real estate property because MassHealth determined that the Appellant had an ownership interest in the property and no exceptions applied. (See, 130 CMR 515.012(A) and Exhibit 1). The Appellant filed this appeal in a timely manner on December 5, 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). At the conclusion of the hearing, the record was left open until January 24, 2023 for the Appellant to submit additional evidence and until February 7, 2023 for MassHealth to review any evidence that was submitted.²

Action Taken by MassHealth

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

¹ The Appellant, who appeared at the hearing *pro se*, is represented by counsel. Due to an inadvertent scheduling error, the hearing was scheduled for a time that the Appellant's counsel previously indicated that she was unavailable.

² The MassHealth representative who appeared at the hearing, informed the parties of his retirement the following week. As a result, it was suggested to the Appellant that the document(s) that were to be submitted to EDMC were addressed to the Supervisor of the Intake Unit.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 515.012(A), in determining that the Appellant has an ownership interest in the piece of real estate upon which it intends to place a lien.

Summary of Evidence

A MassHealth representative appeared at the hearing via telephone and testified as follows: As of the date of the hearing, MassHealth had not received the SC-1 discharge form from the nursing facility, despite contacting them on two (2) occasions. The MassHealth representative explained that as a result of not receiving this form from the nursing facility, MassHealth still has the Appellant listed as receiving long-term care and paying bills on behalf the Appellant. The MassHealth representative further explained that that once MassHealth does receive the SC-1 discharge form, the issue of lien placement would resolve.

The Appellant appeared at the hearing via telephone and testified that she received verification from the nursing facility that she had already been discharged to her home for months before receiving the Notice of Intent to place a lien. Further, she submitted all of the paperwork that she received, (including notices from the Social Security Administration that pertained to the Appellant's adult daughter who resides with the Appellant at home) to her attorney prior to the hearing. (See, Exhibit 2; Exhibit 3).

In response, the MassHealth representative explained that the specific paperwork that MassHealth was looking for, specifically, the SC-1 discharge form was not received, as of date. Further, once received, the issue as to lien placement would resolve. The Appellant agreed to contact the nursing facility immediately after the hearing.

The record was left open until January 24, 2023 for the Appellant to submit the outstanding documentation to MassHealth. The record was also left open until February 7, 2023 for MassHealth to review said verifications. (See, Exhibit 5). On January 20, 2023, the Appellant submitted the requested documentation which has been incorporated into the record as Exhibit 6. On February 15, 2023, the MassHealth representative indicated that MassHealth has accepted the requested documentation submitted by the Appellant and therefore a lien will not be placed on the Appellant's real estate property. (See, Exhibit 7, p. 1).

Findings of Fact

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

1. The Appellant was previously admitted to a nursing facility for long-term care services. (Testimony).

2. The Appellant was discharged from the facility and returned home where she resides with her adult daughter. (Testimony; Exhibit 2, p. 3).
3. As of the hearing date, MassHealth did not receive the Appellant's SC-1 discharge form from the nursing facility. (Testimony).
4. MassHealth had the Appellant listed as currently receiving long-term care services. (Testimony).
5. In November of 2022, MassHealth issued a notice of intent to place a lien on the Appellant's real estate property. (Testimony; Exhibit 1).
6. Following the hearing, the record was left open until January 24, 2023 for the Appellant to submit the discharge documentation. (Exhibit 6).
7. The record was also left open until February 7, 2023 for MassHealth to review any documentation that was submitted on behalf of the Appellant. (Exhibit 6).
8. The Appellant submitted the pertinent documentation to MassHealth in January of 2023.
9. In February of 2023, MassHealth accepted the documentation that was received and noted that a lien would not be placed on the Appellant's real estate property. (Exhibit 7, p. 1).

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.

130 CMR 515.012.

In the present case, the Appellant testified that she was discharged from the nursing facility to her home for months prior to receiving the Notice of Intent to place a lien. (See, 130 CMR 515.012(A)(2)(a)). Moreover, the Appellant submitted the pertinent documentation to MassHealth which included her date of discharge from the nursing facility.

MassHealth may make an adjustment in the matters at issue before or during an appeal period. (See, 130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the Appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (*Id.*).

With respect to 130 CMR 610.035, the Board of Hearings will dismiss a hearing when....

- (1) the request is not received within the time frame specified in 130 CMR 610.015;
 - (2) the request is withdrawn by the appellant;
 - (3) the sole issue is one of state or federal law requiring automatic change in assistance for classes of members;
 - (4) the stated reason for the request does not constitute grounds for appeal as set forth in 130 CMR 610.032. Without limiting the generality of the foregoing, except as provided in 130 CMR 610.032(A)(11), no provider decision or action including, but not limited to, a provider determination about whether or the extent to which a service is medically necessary constitutes an appealable action hereunder;
 - (5) the stated reason for the hearing request is outside the scope of 130 CMR 610.000 as set forth in 130 CMR 610.003;
 - (6) BOH has conducted a hearing and issued a decision on the same appealable action arising out of the same facts that constitute the basis of the request;
 - (7) the party requesting the hearing is not an applicant, member, or resident as defined in 130 CMR 610.004;
 - (8) BOH learns of an adjustment or action that resolves all of the issues in dispute between the parties;
 - (9) BOH learns that the applicant or member has passed away prior to the date of filing and there is no full compliance with 130 CMR 610.016(B) within ten days of a BOH request;
 - (10) BOH learns that the applicant or member has passed away prior to the date of filing and scheduling a hearing and is not informed until the date of the hearing and there is no full compliance with 130 CMR 610.016(B); or
 - (11) the appellant fails to appear at a scheduled hearing.
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130 CMR 610.035(A).

Here, the MassHealth representative reviewed the submitted documentation and notified the parties that a lien would not be placed onto the Appellant's real estate property. Because the appeal issue has been resolved in favor of the Appellant, there is nothing left to dispute before the hearing officer. For the above stated reasons, this appeal is dismissed pursuant to 130 CMR 610.035(A)(8).

Order for MassHealth

If it has not already done so, rescind the Notice of Intent to Place a Lien dated November 7, 2022. In the event that a lien has been placed on the Appellant's property, remove said 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.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

Appellant's Representative: [REDACTED]