

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2300394
<b>Decision Date:</b>	2/16/2023	<b>Hearing Date:</b>	02/14/2023
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**  
Daughter, and Son

**Appearance for MassHealth:**  
Gail Torla, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	130 CMR 515.012(A)
<b>Decision Date:</b>	2/16/2023	<b>Hearing Date:</b>	02/14/2023
<b>MassHealth's Rep.:</b>	Gail Torla	<b>Appellant's Rep.:</b>	Daughter, Son
<b>Hearing Location:</b>	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 November 28, 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 January 13, 2023 (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

Appellant was admitted to a skilled nursing facility on [REDACTED] and is receiving MassHealth long-term care coverage. There is no reasonable expectation that Appellant will be discharged from the medical institution and return home. The MassHealth representative testified that in February 2002, Appellant and his spouse transferred by quitclaim deed, property owned by

Appellant and his spouse to themselves and their daughter. Appellant's spouse died in 2004 (Exhibit 4, p. 4). MassHealth questioned the validity of the deed, which is handwritten, does not bear a notary seal, and does not specify whether the property was conveyed as tenants in common or as joint tenants; however, the deed shows that Appellant has an otherwise unspecified legal interest in the property, and is listed on an Unofficial Property Record Card as an owner of the property along with his deceased spouse and daughter (Exhibit 4, p. 4). On November 28, 2022, MassHealth notified Appellant of its intent to place a lien on the property for estate recovery purposes or in the event the property is sold during Appellant's lifetime, and subsequently placed the lien (Exhibits 1, 4).

Appellant's daughter testified that in 2002 Appellant and his spouse transferred an interest in the property to her by quitclaim deed which was drafted by an attorney. She stated that Appellant remains a co-owner of the property. She added that her brother and his family have resided in the property for the last 10 years while helping care for Appellant. She testified that she pays the property taxes and there is no plan to sell the property.

## **Findings of Fact**

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

1. Appellant was admitted to a skilled nursing facility on [REDACTED] and is receiving MassHealth long-term care coverage.
2. There is no reasonable expectation that Appellant will be discharged from the medical institution and return home.
3. In February 2002, Appellant and his spouse transferred by quitclaim deed, property owned by Appellant and his spouse to themselves and their daughter.
4. The deed is handwritten, does not bear a notary seal, and does not specify whether the property was conveyed as tenants in common or as joint tenants.
5. Appellant has an otherwise unspecified legal interest in the property and is listed on an Unofficial Property Record Card as an owner of the property along with his spouse and daughter.
6. Appellant's spouse died in 2004.
7. On November 28, 2022, MassHealth notified Appellant of its intent to place a lien on the property, and subsequently placed the lien.
8. The property is occupied by Appellant's adult son and his family.

## Analysis and Conclusions of Law

Regulation 130 CMR 515.012: Real Estate Liens, follows in pertinent part:

(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.

Appellant was admitted to a skilled nursing facility on [REDACTED], and is receiving MassHealth long-term care coverage. Appellant continues to reside in a skilled nursing facility with no reasonable expectation of being discharged home. In February 2002, Appellant and his spouse transferred by handwritten quitclaim deed, property owned by Appellant and his spouse to themselves and their daughter. The deed does not specify whether the property was conveyed as tenants in common or as joint tenants. Thus, Appellant has an otherwise unspecified legal interest in the property with his daughter, Appellant's spouse's death, and the validity of the deed notwithstanding.<sup>1</sup> There is no evidence that any of the conditions outlined above precluding placement of a lien are met; and MassHealth issued proper notice of its intent to place a lien (Exhibit 1). Therefore, the property is subject to a lien; and the MassHealth action is correct.<sup>2</sup>

---

<sup>1</sup> If the deed is valid, Appellant has a legal interest in the property with his daughter, the predeceased spouse's interest aside; if it is not valid, Appellant has a legal interest in the property based on his ownership with his predeceased spouse prior to the handwritten deed. The question of whether the handwritten deed is valid need not be evaluated here as under either scenario, Appellant has a legal interest in the property which MassHealth is allowed to lien as provided in 130 CMR 515.012(A). However, the percentage of the property Appellant owns may become a valuation issue in the event the property is sold, or estate recovery is implemented.

<sup>2</sup> The issue on appeal is limited to MassHealth's placement of a lien on property in which Appellant has a legal interest. Regulation 130 CMR 515.012 (B)-(F) describes the potential effects of a lien in certain circumstances:

The appeal is DENIED.

## Order for MassHealth

None.

---

(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 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
  1. 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;
  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.

## **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: Lien Coordinator, UMass Medical-Estate Recovery Unit, P.O. Box 15205, Worcester, MA 01615-0205