

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300964
Decision Date:	4/21/2023	Hearing Date:	03/09/2023
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:



Appearances for MassHealth:

Kathy Boileau, Springfield MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Lien
Decision Date:	4/21/2023	Hearing Date:	03/09/2023
MassHealth's Rep.:	Kathy Boileau, Springfield MEC	Appellant's Reps.:	Appellant's Daughters
Hearing Location:	Board of Hearings (Remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated January 6, 2023, MassHealth notified the appellant of the agency's intent to place a lien on the appellant's property (Exhibit 1). The appellant filed a timely appeal of the notice on February 3, 2023 (Exhibit 2). Notice of intent to place a lien is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth sent the appellant a Notice of Intent to Place a Lien.

Issue

The appeal issue is whether MassHealth is entitled to place a lien on the appellant's property.

Summary of Evidence

A long-term care eligibility worker from the Springfield MassHealth Enrollment Center appeared at the hearing by telephone and testified as follows: The appellant, who is over 100 years old, is a single female who lives in a nursing facility. A MassHealth long-term care application was filed on her behalf on September 28, 2022. In assessing her eligibility for long-term care benefits, MassHealth determined that she owned real estate that was held in a revocable trust and therefore countable for MassHealth purposes. On November 21, 2022, MassHealth denied the appellant's long-term care application due to excess assets. On December 18, 2022, the property was moved out of the revocable trust and transferred back to the appellant, and as such was no longer countable to her. MassHealth approved the appellant for long-term care coverage on January 6, 2023.

The MassHealth case worker testified that the property in question is considered noncountable because it is the appellant's primary residence as well as a business property (as it also generates rental income). Though it is noncountable, MassHealth moved to place a lien on the property in case it is sold during the appellant's lifetime. On January 6, 2023, the same date of the approval notice, MassHealth notified the appellant of its intent to place a lien.¹ The MassHealth representative indicated that the property does not fall under any of the regulatory exceptions that would prevent MassHealth from placing the lien.

The appellant was represented at the hearing by two daughters.² They expressed surprise and confusion about the lien notice, indicating that they were uncertain what it meant for the property. They stated that the appellant has a four-family home, with family members living in some of the other units. The daughters stated that the appellant was fine for years, but needed 24-hour care after a fall and eventually moved to the nursing facility.

The MassHealth representative testified that if the appellant wished to avoid the lien, she could potentially transfer the property to the daughter who had lived with her under the "caretaker child" exception to the long-term care transfer regulations. She explained that the appellant and her daughter would have to submit confirmation that the daughter has lived in the home for at least two years preceding the appellant's admission to the facility, documentation (such as a birth certificate) confirming the daughter's relationship to the appellant, and a letter from the appellant's doctor

¹ The notice states that the Commonwealth "intends to place a lien against all property and rights to all property in MIDDLESEX County, including the property more fully described below." The notice contains no additional information about the property the agency purported to lien; there is no street address, town, or other identifying information. However, there is no dispute as to which property the notice refers. See Exhibit 1.

² One of the daughters is the appellant's power of attorney, and the other lived with her in the community prior to her nursing facility admission.

confirming that the daughter provided care that allowed the appellant to remain in the community.³ However, she reiterated that MassHealth would only take action on the lien if the property were sold while the appellant is still living.

Findings of Fact

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

1. The appellant, who is over 100 years old, is a single female who lives in a nursing facility.
2. On September 28, 2022, a MassHealth long-term care application was filed on her behalf.
3. On November 21, 2022, MassHealth denied the appellant's long-term care application due to excess assets. These assets included property in a revocable trust.
4. On December 18, 2022, the property was removed from the trust and transferred back to the appellant, rendering it noncountable for MassHealth purposes.
5. On January 6, 2023, MassHealth approved the appellant for long-term care coverage.
6. Also on January 6, 2023, MassHealth issued a Notice of Intent to Place a Lien on real estate owned by the appellant. The property at issue is the home where she lived prior to her admission to the nursing facility.
7. The appellant does not have a spouse; a child who is under 21, blind, or totally disabled; or a sibling with a legal interest living in the property.

Analysis and Conclusions of Law

Under 130 CMR 515.012, MassHealth may place a lien on a member's property to recover the cost of medical benefits paid on his or her behalf. The regulations governing liens provide as follows:

(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:

³ Under similar provisions at 130 CMR 515.012(D)(1), MassHealth would defer seeking repayment under the lien if a child living in the home met these requirements.

- (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 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 that, when purchased, 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.

(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.

In the present case, MassHealth notified the appellant of its intent to place a lien on her former home. The relevant facts are not in dispute: That the appellant is a resident of a long-term care facility; that none of the applicable relatives (a spouse; a child who is under the age of 21, blind, or totally disabled; or a sibling with a legal interest in the property) lives in the house; and that the appellant cannot reasonably be expected to be discharged from the nursing facility to return home. Under these circumstances, all of the requirements for placement of a lien have been satisfied.

As the lien is permitted by regulation, MassHealth's notice was not erroneous. This appeal is denied.

Order for MassHealth

Proceed with placement of the 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Springfield MEC

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