

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2301340
Decision Date:	5/16/2023	Hearing Date:	03/17/2023
Hearing Officer:	Kimberly Scanlon	Record Open to:	03/20/2023

Appearance for Appellant:
Via telephone



Appearance for MassHealth:
Via telephone
Monique Garreffi



*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:	5/16/2023	Hearing Date:	03/17/2023
MassHealth's Rep.:	Monique Garreffi	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center Room 3 (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 January 10, 2023, MassHealth notified the Appellant of its intent to place a lien on 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 February 17, 2023. (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 March 20, 2023 for the Appellant and for MassHealth to submit additional evidence. (See, Exhibit 8).

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, 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: liens were completed on two pieces of property; one is a parcel and the other is real estate because tax assessor cards (records) name the Appellant as executrix and as the current owner of both properties. The MassHealth representative further testified that it is unclear whether the Appellant inherited or owned both properties as there were two other family members previously listed on both assessor cards and both members are now deceased. MassHealth does not have anything to indicate that the Appellant is not the executrix nor the current owner of said properties. Therefore, there is a lien on both properties and should the properties sell during the Appellant's lifetime, MassHealth has the right to collect for monetary payments made for the Appellant's long-term care at the nursing facility. MassHealth does not have access to probate records in order to ascertain whether the Appellant inherited the real estate, however, the MassHealth representative understands that there are tax takings on both properties and one property may be in the foreclosure process.

The Appellant's representative appeared at the hearing via telephone and testified that he is the Appellant's conservator, *Guadian ad Litem*, and successor trustee for all three family trusts. The Appellant's representative explained that he has a document from the Executive Office of Health and Human Services dated June 2, 2022 that identifies the Appellant's assets and what was needed in order to have the Appellant qualify for MassHealth long-term care coverage. Accordingly, the Commonwealth determined that the Appellant had approximately \$ 19,034.00 worth of assets which were subsequently spent down. As for the assessor cards, the Appellant was named as trustee of two different trusts. One trust was the result of a real estate plan that the Appellant's uncle set up in the early 1990's and the other was set up in the mid 1990's. The Appellant's representative further testified that he was unaware of the potential lien on the second piece of property¹, however, he is able to testify to both pieces of property. With respect to the first piece of property, it is owned in trusts, specifically three trusts. The Appellant was named as trustee for said trusts, as a lifetime beneficiary with the remaining interest to her great-granddaughters. The Appellant's representative was subsequently appointed as successor trustee to all three trusts. With respect to the first property, it is a vacant piece of land that is currently for sale. Any proceeds will be paid to the Commonwealth and to the Town for outstanding taxes that go back to 2010.

As to the second piece of property at issue, the title owner is a trust that was established in 1995. The Appellant's representative is currently named as successor trustee. Prior to the Appellant's representative being named as successor trustee, the Appellant was named as trustee with a lifetime beneficial interest to the income. There is no income in the trust, as of present date. The

¹ As of the date of the hearing, the only Notice of Intent to Place a Lien included one piece of property. (See, Exhibit 1).

principal amount, if any, would go to the Appellant's great granddaughters as the remainder beneficiaries. The Appellant's representative reiterated that he was surprised to learn this piece of property was also subject to a lien because there is no real estate in the Appellant's name. The Appellant's representative testified that he now understands the discrepancy is because of the assessor cards. However, the Appellant's representative explained that there is no real estate in the Appellant's name and he is still trying to figure out whether there will be any monies left after all of the taxes are paid, along with the interest and penalties imposed. There are also numerous title issues associated with this property, which resulted in the Appellant's representative hiring an engineer to modify the title plan that was initially recorded with the Town due to a defect. The total amount of taxes to be paid on all properties (the two at issue here and an additional two pieces of property) is approximately \$ 749,100.00.

In response, the MassHealth representative testified that she understands that both properties in question were held in an estate trust for the Appellant but there is nothing to indicate that the Appellant's name was no longer listed on the properties. She reiterated that before a MassHealth member dies, MassHealth does have the right to place a lien on property in which said member has a legal interest. As of date, MassHealth does not have enough information to release the liens.

The Appellant's representative explained that he has updated assessor cards that were corrected by the Town. He agreed that the previous cards named various owners. The Appellant's representative explained that in addition to title issues, and both properties in disrepair, there is also a squatter residing on one of the properties at issue, including several broken down tractors and utilities vehicles that will cost approximately \$ 50,000.00 to remove. The Appellant's representative reiterated that both properties in question were held in trusts. As successor trustee, the Appellant's representative is required to preserve any interest and value in the trusts for the benefit of the great-granddaughters because there is no income. Moreover, there is nothing to rent on the premises as a result of the squatter issue.

The record was left open until March 20, 2023 for the Appellant's representative to submit the outstanding documentation to MassHealth. The record was also left open for MassHealth to review said documentation and to submit the second Notice of Intent to Place a Lien on the second property at issue. (See, Exhibit 8). On March 17, 2023, MassHealth submitted the lien for the second property. (See, Exhibit 9, p. 10). The MassHealth representative explained she is unable to print the notice of a lien from the computer she was presently using and made inquiry as to whether there was a will (or any documentation from Probate) verifying that the Appellant was or was not an heir to the real estate and therefore had no ownership in either property. (See, Exhibit 9, p. 9). On the same date, the Appellant's representative submitted, *inter alia*, a copy of the will which omitted any children known or unknown from receiving anything except what was provided in the trusts. (See, Exhibit 9, pp. 1-8). On March 23, 2023, the MassHealth representative indicated that the documentation submitted was reviewed by her and by Estate Recovery and both agreed that the Appellant has no ownership in either real estate properties. (See, Exhibit 10, p. 3). The MassHealth representative therefore submitted Authorization to Release a MassHealth Lien on

both properties at issue. (See, Exhibit 10, pp. 1-2).

Findings of Fact

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

1. The Appellant is currently at a nursing facility for long-term care services. (Testimony; Exhibit 3).
2. MassHealth identified two (2) pieces of real estate that the Appellant is listed as the executrix and current owner of both. (Testimony).
3. There was only one Notice of Intent to place a lien received, as of the hearing date. (Testimony; Exhibit 1).
4. The properties in question are owned in trusts. (Testimony).
5. The Appellant was listed as trustee for the trusts, as a lifetime beneficiary as to income with the principal (remaining) interest to the Appellant's great-granddaughters. (Testimony).
6. Currently, there is no income within the trusts. (Testimony).
7. The Appellant's representative was named as successor trustee for the trusts. (Testimony).
8. The Appellant's representative was also named as conservator for the Appellant. (Testimony; Exhibit 5).
9. Following the hearing, the record was left open until March 20, 2023 for the Appellant to submit additional documentation. (Exhibit 8).
10. The record was also left open until March 20, 2023 for MassHealth to review any documentation submitted on behalf of the Appellant and to submit the notice of intent to place a lien on the second piece of real estate that MassHealth identified. (Exhibit 8).
11. The Appellant submitted the pertinent documentation to MassHealth on March 17, 2023. (Exhibit 9).
12. On or about March 23, 2023, MassHealth accepted the submitted documentation and determined that the Appellant has no ownership in either real estate property. MassHealth therefore submitted authorization notices to release both liens. (Exhibit 10).

Analysis and Conclusions of Law

Regulation 130 CMR 515.012(A) 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.

130 CMR 515.012(A).

In the present case, the Appellant's representative testified that the Appellant does not have any legal interest in any property. Moreover, the Appellant's representative submitted the pertinent documentation to MassHealth indicating that the Appellant does not have any legal interest in either property at issue.

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.

....

130 CMR 610.035(A).

In the present case, the MassHealth representative reviewed the pertinent documentation that she received and submitted Authorizations to Release the liens that were placed on two pieces of real estate. 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 Notices of Intent to Place a Lien, both dated January 10, 2023. In the event that a lien has been placed on the Appellant's properties identified in the January 10, 2023 notices, remove said liens.

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