

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Numbers:	2303499 2303501
Decision Date:	7/24/2023	Hearing Date:	06/05/2023
Hearing Officer:	Alexis Demirjian		

Appearance for Appellant:



Appearance for MassHealth:
Evelyn Daniel, Springfield MEC



*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:	Intent to Place a Lien and PPA Amount
Decision Date:	7/24/2023	Hearing Date:	06/05/2023
MassHealth's Rep.:	Evelyn Daniel	Appellant's Rep.:	
Hearing Location:	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 March 28, 2023, MassHealth approved the appellant for long-term care benefits and determined that the appellant has a Patient Pay Amount ("PPA") of \$1,538.78. (See 130 CMR 520.025 and 130 CMR 520.026 and Exhibit 3) Additionally, through a notice dated March 30, 2023, MassHealth notified the appellant of its intent to place a lien on a property owned by the appellant. (see 130 CMR 515.012 (A) and Exhibit 6). The appellant, through her daughter serving as power of attorney ("POA"), filed an appeal of each notice in a timely manner on April 28, 2023. (see 130 CMR 610.015(B) and Exhibit 2).¹ Individual MassHealth agency determinations regarding scope and amount of assistance are grounds for appeal before the Board of Hearings. (see 130 CMR 610.032(5)). Additionally, notification of an intent to place a lien on a member's property is valid grounds for appeal for appeal. (see 130 CMR 515.012 (A) and 130 CMR 610.032 (A)).

Action Taken by MassHealth

¹ The Board of Hearings initially dismissed the requests for fair hearings submitted on behalf of the appellant for failure to provide a copy of the authority granting the appellant's daughter the authority to file requests for fair hearing on behalf of the appellant. On May 8, 2023, the Board of Hearings received a copy of the authority, in the form of a power of attorney, which granted the appellant's daughter the authority to file on behalf of the appellant.

MassHealth approved the appellant's application for long-term care benefits and assessed a PPA of \$1,538.78.

MassHealth notified the appellant of their intent to place a lien on [REDACTED]
[REDACTED]

Issues

Whether MassHealth was correct, pursuant to 130 CMR 520.025 and 130 CMR 520.026), in determining the appellant's PPA in the amount of \$1,538.78.

Whether MassHealth was correct, pursuant to 130 CMR 515.012 (A), in determining that it intended to place a lien on the appellant's property.

Summary of Evidence

Intent to Place a Lien

The appellant, through her daughter, raised two arguments on appeal. The first pertained to the notice of intent to place a lien on the appellant's property. At hearing the appellant's daughter presented evidence of a reverse mortgage on the property that MassHealth had intended to place a lien. The appellant argues that the reverse mortgage means that MassHealth cannot receive any recoupment of payments for the appellant's medical care because the mortgage company is entitled to the proceeds of the home when it is sold.

MassHealth argued that the existence of the reverse mortgage did not have bearing on whether MassHealth could place a lien on the appellant's property. MassHealth cited to the regulation governing liens on property 130 CMR 515.012 to explain the factors reviewed by MassHealth. She testified that MassHealth may place a lien on property, without a court order, when the following factors exist: 1) the member is an inpatient receiving long-term or chronic care in a nursing facility or other medical institution; 2) none of the following relatives lives in the property: a spouse; a child younger than 21 years old, or a blind or permanently and totally disabled child; or 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; 3) the MassHealth agency determines that the member cannot reasonably be expected to be discharged from the medical institution and return home; and 4) the member has received notice of the MassHealth determination that the above conditions have been met and that a lien will be placed and the notice includes the member's right to a fair hearing.

In support of the argument that MassHealth had met the criteria required by the regulation for placing a lien on a member's property, the MassHealth representative submitted documentary

evidence. This documentation, known as the SC-1, documents the admission of MassHealth members to nursing facilities. The SC-1, dated March 17, 2023, stated that the appellant met the clinical eligibility for nursing facility services and the appellant was expected to stay in the facility for more than six months. The documentation did not include a certification by a medical provider that the appellant was expected to return to her home within six months after the appellant's first month of admission. The appellant's daughter did not contest that the appellant requires care in a nursing facility on a long-term basis and is not expected to return home.

Additionally, MassHealth testified, and the appellant's daughter did not contest, that there are no relatives living in the property such as spouse; a child younger than 21 years old, or a blind or permanently and totally disabled child; or 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.

As such, MassHealth maintained that the intent to place a lien on the property was valid and that the conditions had been met and MassHealth had properly issued a notice compliant with the regulation.

The notice includes the following language:

If the property is sold during your lifetime, you must repay MassHealth from your share of the proceeds for the cost of all medical services provided on or after April 1, 1995. Repayment for the cost of the nursing facility and other long-term care services will not be required if you have notified MassHealth that you do not intend to return home and, on the date you entered the nursing facility or other medical institution, have a long-term care insurance policy that meets certain minimum coverage requirements. All other costs will be recovered.

No evidence was introduced into the record that the appellant has long-term care insurance.

Patient Paid Amount

Regarding the issue of the appellant's PPA assessment, the appellant's daughter argued that because the appellant is required to maintain a home security system and keep the property in good repair as conditions of the reverse mortgage those costs should be deducted from the appellant's PPA. In support of this assertion, she introduced several bills related to maintenance of the prep including a security system, tax bill, homeowner's insurance, and utility bills. The appellant argued that the appellant's PPA should be adjusted to account for these expenses.

MassHealth testified that the appellant's PPA was calculated by first determining the appellant's countable income. In this case, the appellant receives \$1366.00 from Social Security and \$245.58 from retirement monthly. Thus, the appellant has a countable income of \$1,611.58. MassHealth

then deducted \$72.80 for the appellant's Personal Needs Allowance ("PNA") consistent with regulation 130 CMR 520.026 (A). After this deduction, MassHealth determined that the appellant's PPA should be \$1,538.78.

MassHealth testified that the appellant did not qualify for an allowable deduction for home maintenance because the regulation only allows for a standard deduction when a competent medical authority certifies in writing that a single individual, with no eligible dependents in the home, is likely to return home within six months after the month of admission. This income deduction terminates at the end of the sixth month after the month of admission regardless of the prognosis to return home at that time.

Additionally, MassHealth testified that they had not received any other documentation that would support making additional allowable deductions under 130 CMR 520.026.

Findings of Fact

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

1. The appellant is a patient at a long-term care facility and is not expected to return home. (*See Testimony; Exhibit 8, p. 8*)
2. None of the following relatives lives in the property at issue in this appeal: a spouse; a child younger than 21 years old, or a blind or permanently and totally disabled child; or 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. (*See Testimony*).
3. The appellant has a countable income of \$1,611.58 that consists of the appellant's Social Security monthly benefit and a monthly pension. (*See Testimony; Exhibit 4, Exhibit 8 p.6-7*).
4. After MassHealth applied the deduction for the appellant's PNA, it determined the appellant's PPA in the amount of \$1,538.78. (*See Testimony; Exhibit 4*)
5. MassHealth correctly calculated the appellant's PPA at \$1,538.78. (*See Testimony; Exhibit 4*)
6. Based on the testimony and documentary evidence, MassHealth appropriately determined that the member cannot reasonably be expected to be discharged from the medical institution and return home. (*See Testimony, Exhibit 8 p.8-9*).
7. MassHealth sent the appellant a notice of intent to place a lien that complied with regulation 130 CMR 515.012(A). (*Testimony; Exhibit 6; Exhibit 8 p. 10*).

Analysis and Conclusions of Law

Intent to Place a Lien

At issue in this appeal, is whether MassHealth appropriately determined that it intended to place a lien on the appellant's property. MassHealth's regulations governing placement of real estate liens to recover medical costs incurred by a member, provide the following:

515.012: Real Estate Liens

(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.

(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.

130 CMR 515.012 (emphasis added).

In the present case, MassHealth appropriately secured a lien under the provisions of 130 CMR 515.012(A)(2), above. The regulation provides several factors that must be met for MassHealth to secure a lien on a member's property. The property is owned by appellant. The appellant is a resident of a long-term care facility and is not expected to return home. There is no evidence to suggest that any qualifying relatives live in the property. Thus, MassHealth appropriately notified Appellant on March 30, 2023, of its intent to secure a lien on her property. Issuance of the notices satisfied the final criteria for MassHealth to place the liens. Id.

This appeal is DENIED insofar as Appellant did not demonstrate MassHealth erred in notifying her of its intent to secure a lien on her property.

Determination of PPA

MassHealth's regulations define a medical institution as a facility public or private "providing acute, chronic, or long-term care, unless otherwise defined within 130 CMR 515.000 through 522.000: *Other Division Programs*. This includes **acute inpatient hospitals, licensed nursing facilities**, state schools, intermediate-care facilities for the mentally retarded, public or private institutions for mental diseases, freestanding hospices, and chronic-disease and **rehabilitation hospitals**." See 130 CMR 515.001 (**bolded emphasis added**).

An individual is considered institutionalized for MassHealth purposes if he or she is placed in one or more medical institutions where the placement lasts or is expected to last for a continuous period of at least 30 days. See 130 CMR 515.001. Members in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts, this contribution is referred to as the "patient-paid amount" or PPA. See 130 CMR 515.001.

Institutionalized members of MassHealth are not subject to a countable income limit but are required to pay a portion of their income to the nursing facility (minus specific deductions set forth in 130 CMR 520.026). See 130 CMR 520.009(A)(3). Social Security benefits are considered countable income. See 130 CMR 520.009 (D).

In calculating the PPA, the regulations allow certain deductions to be made from an institutionalized member's income. See 130 CMR 520.009(A)(3). These deductions are listed at 130 CMR 520.026, which states that "[g]eneral income deductions must be taken in the following order: a personal-needs allowance; a spousal-maintenance-needs allowance; a family-maintenance-needs allowance

for qualified family members; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses.” The personal-needs allowance, \$72.80 per month, is set by regulation. *See 130 CMR 520.025*. MassHealth allows a deduction for maintenance of a former home. *See 130 CMR 520.026 (D)*. MassHealth also allows for a deduction for health-care coverage and other incurred expenses for the appellant’s necessary medical and remedial-care expenses. *See 130 CMR 520.026 (E)*.

The only allowable deduction raised at hearing is the home-maintenance allowance. MassHealth allows a deduction for maintenance of a former home. *See 130 CMR 520.026 (D)*.

130 CMR 520.026 (D)(1) provides the following:

The MassHealth agency allows a deduction for maintenance of a home when a competent medical authority certifies in writing that a single individual, with no eligible dependents in the home, is likely to return home within six months after the month of admission. This income deduction terminates at the end of the sixth month after the month of admission regardless of the prognosis to return home at that time.

Despite the introduction of several bills that correspond to the maintenance of the appellant’s former home, the appellant does not qualify for this allowable deduction. The uncontroverted testimony and evidence show that the appellant was admitted to the nursing facility and is not expected to return to their home. Additionally, the documentary evidence does not include a certification in writing that the appellant is likely to return home within six months after the month of admission as required by the regulation to qualify for this limited allowable deduction.

For those reasons and based on the evidence and testimony presented at hearing, I find that MassHealth correctly calculated the appellant’s PPA. Accordingly, with respect to the appeal of MassHealth’s PPA determination 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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186

MassHealth Representative: Lien Coordinator, UMass Medical – Estate Recovery Unit, P.O. Box 15205, Worcester, MA 01615-0205, 508-856-7638

[REDACTED]