

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Numbers:</b>	2303822 & 2303825
<b>Decision Date:</b>	8/15/2023	<b>Hearing Date:</b>	07/11/2023
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*



Pro Se

**Appearance for MassHealth:**

*Via telephone:*

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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	PPA; Lien
<b>Decision Date:</b>	8/15/2023	<b>Hearing Date:</b>	07/11/2023
<b>MassHealth's Rep.:</b>	Evelyn Daniel	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center Remote	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

These two appeals involving the same appellant were consolidated into one.

Through a notice dated February 24, 2023, MassHealth notified the appellant that her patient paid amount (PPA) would increase from \$5,867.11 to \$7,000.11 beginning February 1, 2023 due to a change in circumstances (Exhibit 1a). The appellant filed a timely appeal of this notice on May 9, 2023 (see 130 CMR 610.015(B) and Exhibit 2a).<sup>1</sup> A determination regarding scope of assistance is a valid basis for appeal. (130 CMR 610.032).

Through a notice dated February 21, 2023, MassHealth notified the appellant of the agency's intent to place a lien on the appellant's property (Exhibit 1b). The appellant filed a timely appeal of the notice on May 9, 2023 (Exhibit 2b). Notice of intent to place a lien is a valid basis for appeal (130 CMR 610.032).

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<sup>1</sup> Due to the Public Health Emergency and when the appellant's notices were dated, the appellant had 120 days, rather than 60 days, in which to file an appeal.

## **Actions Taken by MassHealth**

MassHealth increased the Appellant's monthly PPA from \$5,867.11 to \$7,000.11 beginning February 1, 2023. On February 21, 2023, MassHealth also sent the appellant a Notice of Intent to Place a Lien.

## **Issues**

The appeal issues are (1) whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining the change in the appellant's PPA; and (2) whether MassHealth is entitled to place a lien on the appellant's property.

## **Summary of Evidence**

### Patient Paid Amount

The MassHealth representative appeared at hearing via telephone and testified as follows: The appellant is over the age of 65 and was admitted to the facility on [REDACTED] 2022. MassHealth issued a notice on February 24, 2023 informing the appellant that her PPA would increase from \$5,867.11 to \$7,000.11 beginning February 1, 2023.<sup>2</sup> The MassHealth representative explained that the appellant's income was calculated to include \$1,987 from social security, \$4,915.81 from a pension and \$170.10 from other. After the \$72.80 monthly Personal Needs Allowance, MassHealth calculated that the PPA was \$7,000.11. The MassHealth representative testified that the PPA had increased because after six months, the home maintenance deduction had been exhausted. The MassHealth representative explained that pursuant to the MassHealth regulations, the deduction for maintenance of a former home terminates at the end of the sixth month after the month of admission, regardless of the prognosis to return home at that time.

The appellant was represented at hearing via telephone by an attorney who testified that the appellant wants to return to her home and receive services in the community. The appellant's attorney did not offer evidence disputing that the appellant's monthly income is \$7,072.91. The appellant's attorney explained that the appellant is medically able to return home, but due to her income would be otherwise ineligible for MassHealth. Currently, the appellant is eligible for coverage as a long-term care resident under 130 CMR 519.006.

The appellant's attorney argued that the appellant should receive the home maintenance deduction from the date that she began receiving MassHealth coverage of August 28, 2022, rather than her admittance date of [REDACTED] 2022. The attorney argued that 130 CMR 520.026 is more restrictive than federal law at 42 CFR 435.725(d). She also argued that because the appellant's

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<sup>2</sup> The appellant's PPA had previously been increased due to the increase in her Social Security Income in 2023.

income is too high to qualify for MassHealth unless the appellant is a long-term care resident, MassHealth's regulations conflict with Title II of the ADA, 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) (*Olmstead*).

In the alternative, she argued that MassHealth wrongly considered the appellant's stay at the skilled nursing center as continuous. She reasoned that the appellant should be eligible for two six-month periods of the home maintenance deduction because the appellant was initially in the facility to recuperate from a broken femur, but then caught Covid-19 and was hospitalized for six days before being readmitted to the skilled nursing center to recover from that. She otherwise would have returned home sooner. The appellant's attorney also argued that the deductible calculated in a different January 17, 2023, notice # 64597484 was incorrect, and that the appellant should be allowed to pay it in installments.

In response, the MassHealth representative testified that MassHealth is not keeping the appellant from leaving the nursing facility, and that she is free to leave if she would like to. The representative further explained that the appellant does not have a deductible as she is currently receiving long-term care. She explained that if the appellant returned home and wanted to receive care in the community, MassHealth would first need to determine if she was eligible for coverage, and then if appropriate, would calculate what her deductible would be. She explained that because the appellant is presently in long-term care, she instead is required to contribute her income in the form of a PPA to the nursing facility.

#### Intent to Place a Real Estate Lien

The MassHealth representative testified that on February 21, 2023, the appellant was notified of an intent to place a lien on her property because the appellant had a legal interest in property, and she was receiving long-term care in a nursing facility as provided for in 130 CMR 515.012.

The appellant's attorney argued the MassHealth erred in sending its notice to place a lien, because the appellant can reasonably expect to be discharged from the medical institution and return home. The attorney further argued that under *Olmstead*, the appellant should be able to receive care, paid for by MassHealth, in her own home. The attorney also argued that the appellant's living expenses, and those of the average Massachusetts resident are greater than what is provided for in 130 CMR 520.030. Additionally, the appellant's attorney argued that such MassHealth regulations violate Massachusetts's "Community First" policy.

The MassHealth representative testified that for the purposes of 130 CMR 515.012(A)(2)(c), she determined that the appellant could not reasonably be expected to be discharged from the medical institution and return home because of the SC-1 Long Term Care screen received from the facility, dated January 20, 2023, indicating a length of stay at the skilled nursing facility greater than six months.

## Findings of Fact

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

1. The appellant is an individual over the age of 65 (Testimony).
2. The appellant is a patient at a long-term care facility (Testimony; Exhibits 6 & 7).
3. The appellant has countable monthly income of \$7,072.91 (Testimony; Exhibit 1a).
4. After MassHealth applied the deduction for the appellant's personal needs allowance, it determined that the appellant's PPA is \$7,000.11 (Testimony; Exhibit 1a).
5. On February 24, 2023, MassHealth sent the appellant a notice informing her that her monthly PPA would change from \$5,867.11 to \$7,000.11, effective February 1, 2023 (Testimony; Exhibit 1a).
6. 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 (Testimony).
7. On February 21, 2023, MassHealth sent the appellant a notice of intent to place a lien (Exhibit 1b).
8. On May 9, 2023, the appellant timely appealed both notices (Exhibits 2a and 2b).

## Analysis and Conclusions of Law

"MassHealth is a cooperative Federal and State undertaking that provides payment for medical services to eligible individuals and families who are unable to pay for their own medical care." *Shelales v. Dir. of the Office of Medicaid*, 75 Mass. App. Ct. 636, 637 (2009). MassHealth is "a needs-based program aimed at maximizing the use of personal funds for long-term care before relying on public funds. Medicaid is, and always has been, a program to provide basic health coverage to people who do not have sufficient income or resources to provide for themselves." *Id.* at 641.

### 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.” 130 CMR 515.001.

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. 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. 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). 130 CMR 520.009(A)(3).

Pursuant to 130 CMR 520.026, the following applies for long-term care general income deductions:

General 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. These deductions are used in determining the monthly patient-paid amount...

(D) Deductions for Maintenance of a Former Home.

(1) 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.

(2) The amount deducted is the 100% federal poverty level income standard for one person.

The personal-needs allowance, \$72.80 per month, is set by regulation. 130 CMR 520.025. The appellant did not dispute MassHealth’s determination of her countable income. As quoted above, the regulation states that the home maintenance deduction “terminates at the end of the sixth month after the month of admission.” While the appellant’s attorney argued that the home maintenance deduction should begin when the appellant began MassHealth coverage, MassHealth did not err in following the wording of the regulation, which dates the deduction to her admission to the facility. The appellant’s further argument that there should be an additional deduction period based on her contraction of Covid-19, is also not supported by 130 CMR

520.026(D)(1). Her return to the facility after a 6-day hospital stay did not constitute a new admission to the facility.

The appellant's attorney made multiple arguments challenging MassHealth's regulations and financial eligibility requirements. The regulations at 130 CMR 610.000 set out the processes for fair hearing requests and proceedings started by applicants or members to review certain actions or inactions by the MassHealth agency or a MassHealth managed care contractor relating to programs administered by the MassHealth agency. 130 CMR 610.001. Specifically, 130 CMR 610.082(C)(2) provides that:

the hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092.

Accordingly, the Board of Hearings has no authority to review the legality of the MassHealth regulations.

For those reasons and based on the evidence and testimony presented at hearing, MassHealth correctly calculated the appellant's PPA. Accordingly, with respect to the appeal of MassHealth's PPA determination this appeal is DENIED.

### **Intent to Place a Lien**

At issue in this appeal, is whether MassHealth appropriately determined placing 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.

(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.

In the present case, MassHealth appropriately intends to place 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 the appellant. There is no evidence to suggest that any qualifying relatives live in the property. MassHealth sent the appellant a notice on February 21, 2023, notifying her of its intent to secure a lien on her property.

At hearing, the appellant testified that she wants to return to her home. In support, her attorney cited the appellant's occupational therapy and progress notes. Exhibit 5. However, a review of these materials does not establish that the appellant is about to be discharged. As provided for in 130 CMR 515.012(B), the lien is to protect MassHealth's ability to recover financially if the property is sold. Furthermore, under 130 CMR 515.012(E), if and when the appellant returns to her home, the lien will be dissolved.

As stated above, to the extent that the appellant is challenging the legality of MassHealth's regulations, that matter is not appropriately addressed in this forum as the Board of Hearings has no authority for such review. 130 CMR 610.082(C)(2). Therefore, such a challenge should be addressed via judicial review in accordance with M.G.L. c. 30A.

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

## **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.

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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

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

[REDACTED]