

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2402426
<b>Decision Date:</b>	4/24/2024	<b>Hearing Date:</b>	03/18/2024
<b>Hearing Officer:</b>	Christine Therrien		

**Appearances for Appellant:**




**Appearance for MassHealth:**

Yisell Medina, Taunton



*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>	LTC – Lien
<b>Decision Date:</b>	4/24/2024	<b>Hearing Date:</b>	03/18/2024
<b>MassHealth’s Rep.:</b>	Yisel Medina	<b>Appellant’s Reps.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center Telephonic		

### 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 1/31/24, MassHealth issued a “Notice of Intent to Place a Lien” to the appellant (130 CMR 515.012 and Exhibit 1). The appellant filed this appeal in a timely manner on 2/15/24. (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth issued a Notice of Intent to Place a Lien.

### Issue

The appeal issue is whether MassHealth was correct in placing a lien.

### Summary of Evidence

The MassHealth representative testified that MassHealth received a long-term care (LTC) application for the appellant on 7/12/23. The MassHealth representative testified that the appellant was approved on 1/31/24 for LTC benefits with a start date of 6/27/23. The MassHealth representative testified that on 1/31/24 MassHealth issued a "Notice of Intent to Place a Lien" for a property at [REDACTED] MA on 1/31/24. The MassHealth representative indicated that the appellant's short-term care benefits had ended, and she was deemed a LTC resident of the facility and cannot reasonably be expected to return home. The MassHealth representative testified that the appellant has a life estate interest in a property at [REDACTED] MA. The MassHealth representative testified that MassHealth received a copy of the deed to the property showing a life estate in the appellant was created on [REDACTED] 02.

The appellant's representative testified that the deed in question states that the life estate would terminate upon the appellant's death or her not residing in the property for 120 days or more. The deed states, "[t]he grantee's life estate shall extinguish upon her death or upon her living outside of the house for a period of one hundred twenty (120) days." The appellant's representative and the appellant's POA, her daughter, testified that the appellant moved out of the property on [REDACTED] 21. The appellant was admitted to the LTC facility on [REDACTED] 23. (Exhibit 6).

The MassHealth representative testified that MassHealth has not assessed a transfer amount for creation of the life estate.

## Findings of Fact

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

1. On 6/22/23, the appellant was admitted to the LTC facility.
2. On 7/12/23, MassHealth received a LTC application for the appellant.
3. On 1/31/24, the appellant was approved for LTC benefits with a start date of 6/27/23.
4. On 1/31/24, MassHealth issued a "Notice of Intent to Place a Lien" on a property at [REDACTED] MA because the appellant's short-term care benefits had ended, and she was determined to be a LTC resident and cannot reasonably be expected to return home.
5. MassHealth received a copy of the deed to the property at [REDACTED] MA showing a life estate was created in the appellant on [REDACTED] 02.
6. The deed in question states that the life estate would terminate upon the appellant's death or her not residing in the property for 120 days or more.

7. MassHealth has not assessed a transfer amount for creation of the life estate.

## Analysis and Conclusions of Law

The appellant applied for MassHealth LTC benefits on 7/12/23 and reported that she had a life estate interest in the property at [REDACTED] MA that was established on [REDACTED] 02. When determining eligibility for MassHealth LTC benefits all assets must be included in the determination. Countable assets include assets to which the applicant would be entitled. (130 CMR 520.007).

### 130 CMR 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.

The appellant resides in a LTC facility, and she is not reasonably expected to return home. The deed to the property at [REDACTED] MA indicates that the appellant holds a life estate. The appellant meets the criteria listed at 130 CMR 515.012(2), above, and none of the relatives outlined in section 130 CMR 515.012(2)(b) reside in the property. MassHealth has properly acted in accordance with 130 CMR 515.012 and notified the appellant of its intention to place a lien on real property located at [REDACTED] MA. The appellant's representative testified that the deed reflects that the life estate will terminate upon the appellant's death, or when the appellant no longer resides in the property for 120 days. The appellant's representative argued that since the appellant has lived outside the home for more than 120 days, the life estate has

terminated. The life estate remains part of the deed to the property in question. Since a typical life estate terminates upon the life estate holder's death, the issue of whether the appellant's life estate was terminated is a land court matter and not within the purview of MassHealth.<sup>1</sup>

This appeal is therefore 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.

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Christine Therrien  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center

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<sup>1</sup> "Freehold estate while the beneficiary or tenant lives. Terminates at the beneficiary's death. Not a legal estate, so the beneficiary cannot sell the property. It is only an equitable interest." *Life estate*, Black's Law Dictionary (2nd ed. 2024).