

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2407013

**Decision Date:** 08/01/2024

**Hearing Date:** 06/04/2024

**Hearing Officer:** Mariah Burns

**Appearance for Appellant:**




**Appearance for MassHealth:**

Gail Torla, Quincy MassHealth Enrollment Center



*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>	Over 65; Long-Term Care; Assets; Liens
<b>Decision Date:</b>	08/01/2024	<b>Hearing Date:</b>	06/04/2024
<b>MassHealth's Rep.:</b>	Gail Torla	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South	<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

Through a notice dated March 4, 2024, MassHealth placed a lien on a property in which the appellant has a legal interest. *See* 130 CMR 515.012(A) and Exhibit 1. The appellant filed this appeal deemed timely by the Board of Hearings on May 9, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Challenging MassHealth's placement of a lien is valid grounds for appeal. *See* 130 CMR 515.012(A)(2)(d).

### Action Taken by MassHealth

MassHealth placed a lien on property in which the appellant has a legal interest.

### Issue

The appeal issue is whether MassHealth properly placed a lien on property in which the appellant has a legal interest and/or can remove it.

## Summary of Evidence

The appellant is an adult over the age of 65 who is currently residing in a skilled nursing facility and receiving MassHealth long-term care benefits. She was represented at hearing by her daughter and an attorney, who appeared in person. MassHealth was represented by a worker from the Quincy MassHealth Enrollment Center, who appeared by telephone. The following is a summary of the evidence and testimony presented at hearing:

On March 4, 2024, MassHealth informed the appellant that it placed a lien on [REDACTED] a multi-family property in which the appellant owns a life estate interest. The MassHealth representative reported that this is action is a regulatory requirement over which MassHealth has no choice or discretion. She stated that the regulations require the placement of a lien in the appellant's circumstances, and she is unaware of any exception to the lien rule.

The appellant's representatives confirmed that none of the individuals currently residing at the property are the appellant's spouse, sibling, or a child under the age of 21. The appellant's daughter reported that, when the appellant transferred her joint tenancy to her children in 2008, it was with the understanding that she could continue to live there, and her interest in the property would terminate upon her death. The appellant's attorney asked for MassHealth to suspend the determination to place a lien upon the property, because the appellant only possesses a 1/3 interest in the form of a life estate, and because the property is in a state of deterioration. He argued that fixing up the property would require the appellant's daughter to take out a loan, which would be difficult to obtain if MassHealth has a lien on it. The appellant's attorney was unaware of any legal means by which the lien could be lifted, but stated that if it was, the appellant's representatives would agree to notify MassHealth in the event that the property was sold while the appellant is a resident of the nursing facility.

## Findings of Fact

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

1. The appellant is an adult over the age of 65 who resides in a skilled nursing facility and is currently receiving MassHealth long-term care benefits. Testimony, Exhibit 4.
2. On March 4, 2024, MassHealth placed a lien on [REDACTED] a property in which the appellant owns a life estate interest. Exhibit 1, Testimony.
3. The appellant filed a request for fair hearing deemed timely by the Board of Hearings on May 9, 2024. Exhibit 2.

4. None of the current residents of the property are the appellant's spouse, sibling, or a child under the age of 21. Testimony.
5. There is no evidence that the appellant can reasonably expect to be discharged from the nursing facility and return home.

## Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. 130 CMR 515.002(B). Any individual who is over the age of 65 must meet asset requirements to establish MassHealth eligibility. See 130 CMR 520.003(A).

Members who are over 65 and who own legal interest in any real property are subject to the requirements of 130 CMR 515.012(A), which enables MassHealth to "recover the cost of medical benefits paid to or [on] behalf of a member" by requiring MassHealth to place a lien on any such property. MassHealth may only do so pursuant to the following 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.

130 CMR 515.012(A)(2). Put otherwise, if the member in question is medically institutionalized with no reasonable chance of returning home, and unless the member's spouse, sibling, or a child under 21 resides in the property in question, MassHealth *will* place a lien on that property after meeting the appropriate notice requirements. MassHealth will discharge that lien "if the member

is released from the medical institution and returns home.” *Id.* at 515.012(D). The regulations provide no exception to this rule. The only exception contemplated prevents MassHealth from recovering proceeds from the sale of the home, not from placing the lien to begin with. 130 CMR 515.012(C).

The appellant asks for an exception be made to the lien requirement in her case. An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.” After review of the regulations and evidence, I find that the appellant has not met this burden.

In this case, the appellant is institutionalized, and there is no evidence that there is a reasonable expectation that she could be discharged from the facility. Further, none of the relatives contemplated in 130 CMR 515.012(A)(2)(b) currently reside in the home. Finally, although the appellant argues that she possesses only an “extremely limited interest” in the property, her life estate would entitle her to 1/3 of the proceeds from any sale of the property in question that occurs during her lifetime.<sup>1</sup> MassHealth would be entitled to recover, from those proceeds, payment for any services provided to the appellant. See 130 CMR 515.012(B). There is simply no exception to the rule that a lien be placed on property in which a long-term care member has a legal interest. While the appellant’s daughter’s desire to renovate the property is understandable, it does not prevent MassHealth from placing the lien.

To the extent that the appellant wishes to come to a “settlement agreement” in which she pledges to notify MassHealth if the home is sold, the regulations provide no mechanism for the Board of Hearings to authorize or order such an arrangement. Should the appellant wish to pursue such an avenue, she would be advised to seek relief through the courts. See 130 CMR 610.082(C) (“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...[and] cannot rule on the legality of such law or regulation and [such a challenge] must be subject to judicial review in accordance with 130 CMR 610.092”). Thus, I find no error in MassHealth’s March 4, 2024, notice placing a lien on the appellant’s property.

For the foregoing reasons, the appeal is hereby DENIED.

---

<sup>1</sup> It’s important to note that a strong inference could be made that receiving these proceeds would likely place the appellant over the asset limit, rendering her ineligible for MassHealth to begin with. See 130 CMR 520.007(5).

## 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.

---

Mariah Burns  
Hearing Officer  
Board of Hearings

CC: [REDACTED]

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator