

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

[REDACTED]

Appellant

Docket No. 2009-14896 DISP
Case No. [REDACTED]
Load No. [REDACTED]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED] [REDACTED] (Appellant) appeared and testified on her own behalf. [REDACTED], represented the Department. [REDACTED], testified as a witness for the Department.

ISSUE

Did the Department properly propose to disenroll the Appellant from Medicaid's Managed Care program at the request of [REDACTED]?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid Beneficiary who is enrolled in [REDACTED] [REDACTED], the Medicaid Health Plan (MHP).
2. The Department of Community Health contracts with [REDACTED] to provide State Medicaid Plan services to the Appellant and other enrolled Medicaid beneficiaries.

3. On ██████████, Appellant presented a prescription from ██████████ to ██████████ with two medications on one prescription: Prednisone 50 mg and Phenergan with codeine. (Exhibit 1, pp. 11 & 20)
4. The pharmacist from ██████████ called ██████████ to verify the prescription from Phenergan; and ██████████ stated that he did not write Prednisone and Phenergan on the same prescription, and the prescription was a fraud. (Exhibit 1, p. 11, 20 & 25)
5. On ██████████, Appellant went into ██████████ at his request and was told that she was being discharged from the MHP due to prescription fraud, and she would have to find another primary care physician (PCP). (Exhibit 1, pp. 11 & 21)
6. On ██████████ the Department of Community Health Enrollment Service Section received a Request for Special Disenrollment from the MHP, requesting that the Appellant be disenrolled from the MHP on the basis that she had altered her prescription, which is considered fraud/misrepresentation. (Exhibit 1, pp. 9 & 10)
7. The Department approved the Health Plan's disenrollment request.
8. On ██████████, the Department sent Appellant written notice, stating that she would be disenrolled from the MHP, effective ██████████, ██████████, due to alleged fraud/misrepresentation regarding a forged or altered prescription. (Exhibit 1, p. 7)
9. On ██████████, the State Office of Administrative Hearings and Rules received Appellant's Request for Administrative Hearing, protesting the Department's action to disenroll her from her MHP.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The Department's CMHP/ Qualified Health Plan contract disenrollment provisions must comply with applicable Federal regulations for Health Plan contracts created under the authority of the Medical Assistance program. Specifically 42 CFR 434.27 provides:

Sec. 434.27 Termination of enrollment.

- (a) All HMO and PHP contracts must specify—

- (1) The reasons for which the HMO or PHP may terminate a recipient's enrollment;
- (2) That the HMO or PHP will not terminate enrollment because of an adverse change in the recipient's health; and
- (3) The methods by which the HMO or PHP will assure the agency that terminations are consistent with the reasons permitted under the contract and are not due to an adverse change in the recipient's health.

The Department of Community Health, pursuant to the provisions of the Social Security Act Medical Assistance Program, contracts with the [REDACTED] to provide State Medicaid Plan services to enrolled beneficiaries. The Department's contract with the Plan provides:

Disenrollment Requests Initiated by the Contractor.

The Contractor may initiate special disenrollment requests to DCH based on Enrollee actions inconsistent with the Contractor membership—for example, if there is fraud, abuse of the Contractor, or intentional misconduct, or if in the opinion of the attending PCP, the Beneficiary's behavior makes it medically infeasible to safely or prudently render Covered Services to the enrollee. Special disenrollment requests are divided into three categories:

- Violent/life threatening situations involving physical acts of violence; physical or verbal threats of violence made against the Contractor providers, staff or the public at the Contractor locations; or stalking situations.
- **Fraud/misrepresentation involving alteration or theft of prescriptions misrepresentation of Contractor membership, or unauthorized use of CHCP benefits.**
- Other noncompliance situations involving the failure to follow treatment plan; repeated use of non-contractor

providers: Contractor provider refusal to see the Enrollee, repeated emergency room use and other situations that impede care.

*Department's Comprehensive Health Care Program
(CMHP) Contract. Section II-G.11 page 19*

In this case, the MHP asserts that Appellant altered/forged her prescription by adding Phenergan with codeine to a prescription for Prednisone. The Department submitted a copy of the forged prescription along with other documentation which substantiates the prescription forgery. The doctor who wrote the prescription stated that he did not write Phenergan and Prednisone on the same prescription, and that the prescription that Appellant presented to [REDACTED] is a fraud.

Appellant denied altering her prescription. However, this Administrative Law Judge found Appellant's testimony to be self-serving and wholly lacking in credibility. Accordingly, the Department acted properly in disenrolling Appellant from the MHP.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly proposed to disenroll the Appellant from the MHP.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 5/18/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.