

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[REDACTED]

Appellant

_____ /

Docket No. 2009-19239 SAS

Case No. [REDACTED]

DECISION AND ORDER

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

After due notice, a telephone hearing was held on [REDACTED]. [REDACTED] (Appellant) appeared and testified on her own behalf.

[REDACTED], hearing coordinator for [REDACTED] appeared on behalf of the contracting agency, (hereafter, 'Department').

ISSUE

Has the Department appropriately proposed termination of the Appellant from the Methadone Maintenance treatment program?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. Appellant is a Medicaid beneficiary. She has been enrolled in the Methadone Maintenance treatment program through [REDACTED].
2. The Appellant has participated in Methadone treatment for approximately 9 years.

3. The Medical Director of the ██████████ program ran a Michigan Automated Prescription System (MAPS) report for the Appellant. The report revealed she has been prescribed opiates by her primary care physician. Additionally, the report revealed she has been prescribed benzodiazepines by her primary care physician.
4. The MAPS report contained information that the Appellant was prescribed at least 330 opiate and/or benzodiazepine pills every month since ██████████, with the exception of ██████████t and ██████████.
5. The Appellant has been observed by the staff at the clinic to be sluggish while attempting to take her dose of Methadone.
6. The Appellant has not denied having been prescribed the opiate medications by her physician.
7. The Appellant was provided an Advance Action Notice, informing her she was being terminated from the Methadone Maintenance treatment program, with detoxification to terminate.
8. On ██████████, the Appellant filed her request for hearing with the State Office of Administrative Hearings and Rules.

CONCLUSIONS OF LAW

The Medicaid program was established pursuant to Title XIX of the Social Security Act (SSA) and is implemented by 42 USC 1396 *et seq.*, and Title 42 of the Code of Federal Regulations (42 CFR 430 *et seq.*). The program is administered in accordance with state statute, the Social Welfare Act (MCL 400.1 *et seq.*), various portions of Michigan's Administrative Code (1979 AC, R 400.1101 *et seq.*), and the state Medicaid plan promulgated pursuant to Title XIX of the SSA.

Subsection 1915(b) of the SSA provides, in relevant part:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this title, may waive such requirements of section 1902 (other than subsection(s) 1902(a)(15), 1902(bb), and 1902(a)(10)(A) insofar as it requires provision of the care and services described in section 1905(a)(2)(C)) as may be necessary for a State –

- (1) to implement a primary care case-management system or a specialty physician services arrangement which restricts the provider from (or through) whom an individual (eligible for medical assistance under this title) can obtain medical care services (other than in emergency circumstances), if such restriction does not substantially impair access to

such services of adequate quality where medically necessary.

Under approval from the Center for Medicare and Medicaid Services (CMS), the Department (MDCH) presently operates a Section 1915(b) Medicaid waiver referred to as the managed specialty supports and services waiver. A prepaid inpatient health plan (PIHP) contracts (Contract) with MDCH to provide services under this waiver, as well as other covered services offered under the state Medicaid plan.

Pursuant to the Section 1915(b) waiver, Medicaid state plan services, including substance abuse rehabilitative services, may be provided by the PIHP to beneficiaries who meet applicable coverage or eligibility criteria. *Contract, Part II, Section 2.1.1, p 23.* Specific service and support definitions included under and associated with state plan responsibilities are set forth in the Mental Health/Substance Abuse Chapter of the Medicaid Provider Manual (MPM). *Contract, Part II, Section 2.1.1, p 23.*

The following Medicaid-covered substance abuse services and supports must be provided, based on medical necessity, to eligible beneficiaries:

- Access assessment and referral (AAR) services
- Outpatient treatment
- Intensive outpatient (IOP) treatment
- Office of Pharmacological and Alternative Therapies (OPAT)/Center for Substance Abuse Treatment (CSAT) approved pharmacological supports

MPM, Mental Health/Substance Abuse, Section 12.1, October 1, 2005, pp 60 - 61.

OPAT/CSAT-approved pharmacological supports encompass covered services for methadone and levo-alpha-acetylmethadol (LAAM) supports and associated laboratory services. *MPM, Mental Health/Substance Abuse Chapter, §§ 12.1, October 1, 2005, p 61.* Opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy.

The Department administers the methadone maintenance treatment program in accordance with specific criteria. The MDCH "Criteria for Opioid Dependent Substance Abuse Treatment with Methadone/LAMM as an Adjunct" is Attachment F-1 of the contract between MDCH and the substance abuse agency. As such, the substance abuse agency must comply with the provisions of Attachment F.

The Criteria allows for administrative discharge of a client for behavioral noncompliance, as follows:

2. Administrative Discharge

Once the program and/or the AAR system have determined the client is not responding appropriately to services available within their treatment modality, it may become necessary to proceed with an administrative discharge for clinical noncompliance...

- a. Clinical Noncompliance – A client’s failure to comply with the provider’s specific treatment protocol and/or treatment plan criteria, despite attempts to address such noncompliance, can result in administrative discharge. Such compliance issues are defined as, but not limited to, the following:

- (3) Continued behavior (non-threatening) interfering with the client’s ability to participate in the clinical process, such as continued use of illicit drugs or misuse of alcohol, missing psychiatric/psychological appointments, and missing evaluation referrals.

Criteria for Opioid Dependent Substance Abuse Treatment with Methadone/LAMM as an Adjunct, Attachment F 1, October 1, 2004 – September 30, 2005, pages 6-7.

In this case the Department representatives assert the Appellant is endangering her own physical well being by obtaining and using an excessive amount of opiate and benzodiazepine based (narcotic) medications in conjunction with her Methadone. It is contrary to the treatment plan and goals of detoxification from opiates and Methadone. The Department witness submitted evidence this had been addressed with the Appellant and documented in the clinical notes of continued opiate use/abuse. The Department witness further cited to the MAPS report. The MAPS report evidences the Appellant has obtained a sufficient number and type of drugs of abuse to jeopardize her physical well-being, her very life, in fact. Specifically, the MAPS report evidences the Appellant has obtained literally hundreds and hundreds of tablets of opiates and benzodiazepines just since ██████████. This is in addition to her continued use of methadone. The uncontested evidence presented evidences the danger posed by continued use of the combination of drugs such as Xanax, Morphine and Vicodin while taking methadone. The Department witnesses assert that her continued use of an excessive amount and type of prescription medication constitutes clinical non-compliance.

The Appellant did not dispute the evidence of the danger posed by taking the prescription medication and methadone. She did contest the termination on the basis of her claim she had been prescribed all the drugs she takes. She asserts they are for treatment of pain. She also testified the use of Methadone is for her treatment of pain. She asserts she has complied with all requirements of the program.

The preponderance of the evidence presented supports the Department's position. The Appellant did not present evidence compelling a finding that she is clinically compliant with the Methadone maintenance program requirements. She is obtaining an excessive quantity of prescription medications from her providers. It is not proven her provider is aware she is accessing Methadone maintenance treatment. The claim that all of the medication is authorized simply because it was prescribed is not credible. It is inconsistent with the goals and purpose of Methadone maintenance treatment. The quantity of the pills in conjunction with the use of Methadone at the same time evidences abuse of the medication sought. By engaging in conduct of continued abuse of controlled substances, the Appellant has violated the terms and conditions of this program, making administrative discharge due to behavioral non-compliance appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I find that the Department has properly proposed the Appellant's termination from the Methadone Maintenance and Detoxification Program.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 7/1/2009

***** 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.