STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

[redacted]

Appellant
_____/

Docket No. 2009-20574 MCE
Case No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* following the Appellant's request for hearing.

After due notice, a hearing was held on [redacted]. [redacted] appeared as Authorized Representative and [redacted] (Appellant), who also appeared and testified on her own behalf.

[redacted], represented the Department of Community Health (Department). Also present on behalf of the Department was [redacted], Special Disenrollment and Medical Exception Specialist.

ISSUE

Did the Department properly deny Appellant's request for exception from Managed Care Program enrollment?

FINDINGS OF FACT

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

1. Appellant is a Medicaid beneficiary who resides in [redacted]. [redacted], Michigan has managed care options available requiring enrollment into a managed care plan. Appellant is in the Medicaid population mandatory to enroll in a Medicaid Health Plan.

2. On [redacted], the Department received three (3) Medical Exception Request forms from the Appellant. The requests were forwarded to the Department of Community Health Enrollment Services Section for evaluation.

3. On [redacted], the Appellant's requests for exception from managed care enrollment were denied. Department records reflect that the Appellant has been enrolled in [redacted] of Michigan for more than two (2) months.

4. Department records reflect that [redacted] is a participating provider in at least one of the Medicaid Health Plans available to the Appellant. Department records also reflect that [redacted] are participating providers, as specialists with a referral from her primary care doctor, in at least one of the Medicaid Health Plans available to the Appellant, including [redacted]

5. The records submitted to the Department for review do not reflect the frequent and active treatment needed to allow for exception from enrollment in a Medicaid Health Plan.

6. On [redacted], the Appellant was sent notification of the exception denials.

7. On [redacted], the Appellant filed her Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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.

On May 30, 1997, the Department was notified of the Health Care Financing Administration's approval of its request for a waiver of certain portions of the Social Security Act to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Qualified Health Plans.

Michigan Public Act 154 of 2005 states, in relevant part:

> Sec. 1650 (3) The criteria for medical exceptions to HMO enrollment shall be based on submitted documentation that indicates a recipient has a serious medical condition, and is undergoing active treatment for that condition with a physician who does not participate in 1 of the HMOs. If the person meets the criteria established by this subsection, the

> department shall grant an exception to managed care enrollment at least through the current prescribed course of treatment, subject to periodic review of continued eligibility.

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section; Version Date: April 1, 2009, (prior versions substantively unchanged); pages 23 and 24, states in relevant part:

> The intent of a medical exception is to preserve continuity of medical care for a beneficiary who is receiving active treatment for a serious medical condition from an attending physician (M.D. or D.O.) who would not be available to the beneficiary if the beneficiary was enrolled in a MHP. The medical exception may be granted on a time-limited basis necessary to complete treatment for the serious condition. The medical exception process is available only to a beneficiary who is not yet enrolled in a MHP, or who has been enrolled for less than two months. MHP enrollment would be delayed until one of the following occurs:
>
> - the attending physician completes the current ongoing plan of medical treatment for the patient's serious medical condition, or
>
> - the condition stabilizes and becomes chronic in nature, or
>
> - the physician becomes available to the beneficiary through enrollment in a MHP, whichever occurs first.
>
> If the treating physician can provide service through a MHP that the beneficiary can be enrolled in, then there is no basis for a medical exception to managed care enrollment.

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section; Version Date: April 1, 2009, (prior versions substantively unchanged); pages 23 and 24, states in relevant part:

> **Serious Medical Condition**
>
> Grave, complex, or life threatening
>
> Manifests symptoms needing timely intervention to prevent complications or permanent impairment.
>
> An acute exacerbation of a chronic condition may be considered serious for the purpose of medical exception.

Chronic Medical Condition

Relatively stable

Requires long term management

Carries little immediate risk to health

Fluctuate over time, but responds to well-known standard medical treatment protocols.

Active treatment

Active treatment is reviewed in regards to intensity of services.

The beneficiary is seen regularly, (e.g., monthly or more frequently,) and

The condition requires timely and ongoing assessment because of the severity of symptoms, the treatment, or both

The treatment or therapy is extended over a length of time.

Attending/Treating Physician

The physician (M.D. or D.O.) may be either a primary care doctor or a specialist whose scope of practice enables the interventions necessary to treat the serious condition.

MHP Participating Physician

A physician is considered "participating" in a MHP if he or she is in the MHP provider network or is available on an out-of-network basis with one of the MHPs for which the beneficiary can be enrolled. The physician may not have a contract with the MHP but may have a referral arrangement to treat the plan's enrollees. If the physician can treat the beneficiary and receive payment from the plan, then the beneficiary would be enrolled in that plan and no medical exception would be allowed.

The Appellant testified she does not like having to treat with a number of different health care providers, because it causes her medical history to be contained in a number of

different records. She otherwise presented no substantive legal challenge to the Department's position in this matter, which is specifically whether she meets current criteria for an exception from managed care enrollment.

Because the record is devoid of evidence contrary to what has been presented by the Department, I conclude its denial of the Appellant's requests for exception from managed care enrollment is appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department's denial of Appellant's requests for an exception from managed care enrollment is appropriate, as in accord with current policy regarding this issue.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Stephen B. Goldstein
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 for the Department of Community Health 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 for the Department of Community Health 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.