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. 2009-24501 MCE
Case No. [redacted]
Load [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.,* upon the Appellant's request for a hearing appealing the Department's denial of exception from Medicaid Managed Care Program enrollment.

After due notice, a hearing was held on [redacted]. [redacted] appeared on his own behalf. [redacted], Department of Community Health, represented the Department. [redacted], appeared as a witness for the Department.

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. The Appellant was enrolled in the Medicaid Managed Care Plan [redacted] in [redacted].

2. Appellant has "recurrent pruritis, recurrent angioedema, asthma and migraines. (Exhibit 1, Pages 7-9).

3. On [redacted], the Department of Community Health received Appellant's Medical Exception Request forms. (Exhibit 1, Pages 5-7).

4. A Department doctor reviewed all three medical exception forms and all of the medical records submitted for the Appellant.

5. On [redacted], the Appellant's [redacted] requests for a managed care exception were denied because all three of Appellant's physicians who completed one of the exception forms, participate in a managed care plan available to Appellant. In addition, the information provided by Appellant's physicians showed his conditions were chronic and did not require active treatment. (Exhibit 1, Pages 7-11).

6. On [redacted], Appellant was sent notifications of the exception denials. (Exhibit 1, Pages 8 and 9).

7. On [redacted], the State Office of Administrative Hearings and Rules for the Department of Community Health, received Appellant's hearing request. (Exhibit 1, Page 6.)

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 246 of 2008 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. (Exhibit 1 Page 16).

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, July 1, 2009, page 23 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.** (Bold added by ALJ.)

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, January 1, 2009, 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 when:
>
> 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 and/or the treatment.
>
> **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 Department does not dispute that the Appellant has several medical conditions. However, all three conditions of the law stated directly above must be met before an exception to enrollment can be granted. A Department medical doctor in addition to the Department witness reviewed all three medical exception requests.

In this case, there is evidence that [redacted], Appellant's physician specialist who completed one of Appellant's medical exception forms, participates in a managed care plan available to Appellant. (See Exhibit 1, Pages 8 and 14). There is also evidence that [redacted] and [redacted], Appellant's internal medicine physicians who completed Appellant's medical exception forms, participate in managed care plans available to Appellant. (See Exhibit 1, Pages 13 and 15). The Department provided sufficient evidence that all five of Appellant's physicians who submitted medical exception requests are available to him through a MHP and therefore the Appellant does not meet the non-participating physician criterion for a medical exception.

The Appellant testified that at the time he requested an exception to mandatory enrollment in Medicaid managed care [redacted] did not participate in a managed care

plan available to him. The Department provided evidence [redacted] now participates in a managed care plan available to Appellant.

The Appellant stated he has several medical conditions and other physicians. The Department responded that the information the physicians submitted for the exception did not meet the active treatment or frequency of visits criteria, for example did not demonstrate an intensity of treatment "monthly or more frequently" or prescribed standard treatment. *See* treatment plan, or frequency of visits, on respective medical exception request forms:

[redacted] - frequency "every three to six months".

[redacted] - treatment "continue medications…Nasonex, Allegra-D, Symbicort".

[redacted] - treatment "continue same medicines…Nasonex, Allegra-D, Symbicort, inhaler".

Review of the applicable medical documentation submitted for the Appellant for consideration of a medical exception supports a finding that the Appellant does not meet the criteria of active treatment; rather he is receiving standard treatment with long term management. Thus, the Appellant does not meet a second criterion for grant of a managed care exception.

The Department provided sufficient evidence that all conditions of the law were not met, thus the request for exception from Medicaid Managed Care was properly denied.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's request for exception from Managed Care Program enrollment.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

_____

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

[redacted]
Docket No. 2009-24501 MCE
Decision and Order

cc: [redacted]

Date Mailed: 9/11/2009

***** 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.