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. 2009-24504 MCE
Case [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] (Appellant) appeared and testified on his own behalf. [redacted], represented the Department. [redacted], testified 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. Appellant is a Medicaid beneficiary who is in the mandatory Medicaid population and required to enroll into a Medicaid Health Plan (MHP). (Exhibit 1, p. 4)

2. On [redacted], the Department received a completed Medical Exception Request form, indicating that Appellant has a diagnosis of ankylosing spondylitis, anxiety, diabetes mellitus-diet controlled, and hepatitis C-not treated; Appellant will need lifetime treatment monthly; and Appellant was last seen on [redacted]; and the medical doctor who completed the Medical Exception Request form does not participate with any MHP. (Exhibit 1, p. 7)

3. On [redacted], the Department sent Appellant notice that his Medical Care Exception Request was denied on the basis: what his doctor sent in describes standard treatment for chronic on-going medical conditions; and his MHP should be able to provide or arrange for the health care services necessary to treat the medical conditions listed in your request, including specialty care. (Exhibit 1, p. 8)

4. On [redacted], the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the denial of her Medical Care Exception Request.

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 123 of 2007 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, January 1, 2008, page 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, January 1, 2008, page 24-25, 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. (Emphasis added)

Appellant argued that he has been seeing the same doctor for several years and would like to continue seeing this doctor who apparently accepts patients with straight Medicaid coverage. Appellant feels that he has been "selectively targeted" by the Department and not treated fairly.

This Administrative Law Judge must uphold the denial of Appellant's Medical Exception Request. The Medical Exception Request that the Department received from Appellant's treating physician fails to establish that an MHP is unable to provide or arrange for the health care services necessary to treat Appellant's medical condition, including specialty care. In addition, what his doctor sent in describes standard treatment for a chronic medical condition, not a condition that would allow for a medical exception. The Department's eligibility determination is in accordance with the applicable law and policy.

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 an exception from Managed Care Program enrollment.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 7/29/2009

***** 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.