

**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:

██████████

Appellant

_____ /

Docket No. 2009-30282 SAS

Case No. ██████████
██████████

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████. ██████████ (Appellant) appeared In Pro Per and testified on his own behalf.

██████████, Hearing Officer, ██████████, Quality Improvement Manager appeared on behalf of the ██████████ Bureau of Substance Abuse Services, a Michigan Department of Community Health contracted provider of substance abuse services to Michigan's Medicaid population (hereafter, 'Department').

ISSUE

Has the Department appropriately proposed the Appellant's termination 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 currently enrolled in the Methadone Maintenance treatment program through the ██████████ Bureau of Substance Abuse Services. He has been attending the ██████████ an agency contracted with the ██████████ to administer Methadone maintenance treatment.

2. The Appellant filed a grievance against the ██████████ challenging, in part, the accuracy of the ██████████ manual method of dispensing Methadone at low doses. The Appellant requested and was granted a conference during which time he could air his grievances. The Appellant appeared at the conference with eight (8) non-ingested, off-site dosing bottles of methadone. Treatment staff convinced the Appellant to return the empty bottles to the facility. The Appellant admitted the non-ingested methadone was given to him by the facility, and that he was not drinking it. Nursing notes reflect the Appellant was suffering from no withdrawal symptoms. (*Exhibit 1; p. 16*)
3. On ██████████, the Appellant filed his Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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 testified that in part, its termination decision relied on the MDCH “Criteria for Opioid Dependent Substance Abuse Treatment with Methadone/LAMM as an Adjunct” and its own methadone services policy. 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 clinical 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:

“ * * * ”

“(4) Failure to comply with necessary medical care for a condition diagnosed by a licensed physician (e.g., diabetes, cardiovascular disease, hypertension, tuberculosis, hepatitis, ulcers, seizure disorder) resulting in danger to self or others and/or interfering with the clinical process. *Such non-compliance will include not using medications prescribed by a physician, failure to keep physician appointments, failure to attend prescribed treatment sessions, or referrals for evaluation for a possible medical condition.*” (Emphasis supplied by ALJ)

“ * * * ”

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.

The Department's witness credibly testified the Appellant appeared at a hearing regarding his grievance against the ██████████ with eight (8) unused bottles of methadone, each of which contained a date when the medication should be taken. The Appellant does not dispute this fact.

The Appellant claims he is not taking the medication because he does not believe the machine is properly dispensing his medication.

While there may be an issue with regard to whether the dispensing machine is working properly, a preponderance of evidence submitted supports a conclusion the Appellant has failed to comply with his physician's order to take whatever medication is provided him. The Department has therefore established clinical non-compliance, rendering termination appropriate.

[REDACTED]
Docket No. 2009-30282 SAS
Decision and Order

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide 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**.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 10/13/2009

***** 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 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.