

**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

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Docket No. 2009-32973 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 hearing was held on [REDACTED], [REDACTED] (Appellant) appeared and testified on her own behalf. [REDACTED], Hearings Coordinator for [REDACTED], represented the Department/Respondent, [REDACTED].

**ISSUE**

Did the Department properly terminate Appellant from the Methadone Maintenance and Detoxification Program?

**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 [REDACTED] with a history of substance abuse. (Exhibit 1)
2. Appellant was enrolled in the Methadone Maintenance and Detoxification Program at the time relevant to this matter. (Exhibit 1)
3. On [REDACTED], Appellant signed a Non-

Compliance Contract with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], acknowledging she understands that in order to remain an active client, she cannot continue to have attendance problems/failure to commit to counseling and illicit urine results. (Exhibit 1, pp. 24 & 25

4. Since being enrolled in the Methadone Maintenance and Detoxification Program, Appellant tested positive for illicit drugs on the following dates:

[REDACTED]

(Exhibit 1, pp. 36-57)

5. On [REDACTED], Appellant was given an Advance Notice of Action, stating that there would be a reduction in her individual-group therapy services and outpatient Methadone treatment effective [REDACTED], due to her illicit drug use. (Exhibit 1, p. 3)
6. On [REDACTED], the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the Department's proposed action.

### **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, §§ 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, §§ 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 Chapter, §§ 12.1, April 1, 2007, pp 61 - 62.*

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 evidence in this case indicates Appellant has a history of meeting the Medicaid eligibility criteria for substance abuse supports and services. However, Respondent contends that Appellant's must be terminated from the Methadone Maintenance and Detoxification Program because she continues to use illicit drugs.

The Respondent testified that its termination decision is based on the MDCH "Enrollment Criteria for Methadone Maintenance and Detoxification Program (10/1/2005 revision)". (Exhibit 1 Page 2.) The criteria are also located on the MDCH website as

“Treatment Policy – 05”. (Exhibit 1 Pages 1 & 2.) The MDCH methadone policy criteria in, substantial part, is Attachment F 1 of the contract between MDCH and the substance abuse agency. As such, ██████████ must comply with the provisions of Attachment F. The Criteria allows for administrative discharge of a client for clinical noncompliance, as follows:

3) Behavioral noncompliance. The Opioid Treatment Programs (OTP) must work with beneficiary to explore and implement methods to facilitate behavioral compliance. When such actions do not result in compliance, the OTP may implement an administrative discharge for behavioral noncompliance.

The commission of acts by the beneficiary that jeopardize the safety and well-being of staff and/or other beneficiaries, or negatively impact the therapeutic environment is not acceptable and can result in immediate discharge. Such acts include, but not limited to, the following:

- Possession of a controlled substance with intent to use and/or sell on agency property.

*Enrollment Criteria for Methadone Maintenance and Detoxification Program, Effective September 1, 2003, and revised August 2005-effective October 1, 2005.*

The preponderance of the evidence presented supports the Department’s position. The Department established that Appellant’s progress in the program has been poor as evidenced by numerous toxicology reports which indicate that Appellant continues to use illicit drugs. On ██████████ and ██████████ Appellant signed a Non-Compliance Contract with ██████████ acknowledging she understands that in order to remain an active client in the program, she cannot continue to have attendance problems/failure to commit to counseling and illicit urine results. However, Appellant continued to use illicit drugs.

In conclusion, the Department has established that Appellant has continued to test positive for illicit drugs, which is a violation of the Methadone Maintenance and Detoxification Program. Accordingly, administrative discharge due to behavioral non-compliance is appropriate.

**DECISION AND ORDER**

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Appellant from the Methadone Maintenance and Detoxification Program.

**IT IS THEREFORE ORDERED THAT:**

Respondent's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: \_\_\_\_\_

**\*\*\* 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.