

**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:

Docket No. 2009-34011 SAS
Case No. [REDACTED]

[REDACTED]

Appellant

_____ /

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] appeared on her own behalf. [REDACTED], Hearing Officer, represented the Respondent [REDACTED] Access Management Systems Representative, [REDACTED] and [REDACTED] Quality Improvement Coordinator and Recipients Rights Advisor, [REDACTED] appeared as witnesses.

ISSUE

Did the Respondent properly terminate Appellant's outpatient methadone treatment?

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] and Medicaid beneficiary.
2. Appellant has a [REDACTED] of opioid dependency and a history of methadone, opiate, oxycodone, propoxyphene (Darvocet) and benzodiazepine use. (Exhibit 1, Pages 2-22, 45.)
3. [REDACTED] is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.
4. [REDACTED] contracts with [REDACTED] to provide outpatient methadone treatment to [REDACTED] enrollees.

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5. Appellant has been receiving outpatient methadone treatment (OMT) through ██████████ since at least ██████████. (Exhibit 1, Page 34)
6. In ██████████ Appellant signed a Client's Responsibility form in which she agreed to not use illegal substances and to provide prescriptions for medication which may alter her drug screen. (Exhibit 1, Page 34)
7. Appellant had positive drug screens for methadone, opiates, oxycodone, Darvocet, or benzodiazepine use at each of the twenty drug screens she had between ██████████ and ██████████ while receiving OMT from the Respondent. (Exhibit 1, Pages 2-21)
8. Prior to the ██████████ termination notice Appellant did not provide a prescription for the benzodiazepine (Xanax) she was taking at the same time as OMT treatment.
9. On ██████████, the Appellant was given an Advance Action Notice, stating she would be terminated from the OMT program and individual-group therapy program. The reason stated was: "illicit drug use" confirmed by positive urinalysis tests. (Exhibit 1, Pages 23-24) She was provided the right to request a fair hearing. (Exhibit 1, Pages 23-24)
10. After the ██████████ termination notice Appellant with the assistance of her ██████████ provided a prescription for the benzodiazepine (Xanax) she was taking at the same time as OMT treatment.
11. The use of benzodiazepines, such as the Xanax taken by Appellant, "boosts" the effects of methadone; for that reason needs coordination with prescribing physicians and methadone providers to avoid abuse. (Exhibit 1, Pages 55-56)
12. Appellant filed a Request for Administrative Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████. (Exhibit 2)

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.

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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 FY 2009, Part II, Section 2.1.1, p 27.* 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 FY 2009, Part II, Section 2.1.1, p 27.*

Medicaid-covered substance abuse services and supports, including Office of Pharmacological and Alternative Therapies (OPAT)/Center for Substance Abuse Treatment (CSAT) – approved pharmacological supports may be provided to eligible beneficiaries. *MPM, Mental Health/Substance Abuse Chapter, §§ 12.1, October 1, 2009, pp 64.*

OPAT/CSAT-approved pharmacological supports encompass covered services for methadone and supports and associated laboratory services. *MPM, Mental Health/Substance Abuse Chapter, §§ 12, October 1, 2009, OPAT/CSAT subsection.* Opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy.

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The evidence in this case indicates Appellant has a ██████████ history of substance abuse. Respondent contends that Appellant's OMT was appropriately terminated because the Appellant demonstrated continued clinical non-compliance.

The Respondent testified that in part, its termination decision relied on the MDCH "Enrollment Criteria for Methadone Maintenance and Detoxification Program". (Exhibit 1, Pages 51-53) The Criteria allows for discharge/termination of a client for clinical noncompliance, as follows:

2. Clinical Noncompliance – A client's failure to comply with the individualized treatment plan, despite attempts to address such noncompliance, may result in administrative discharge... Reasons for such discharge include but are not limited to the following:

- Treatment goals have not been met within two (2) years of commencement of treatment...
- Repeated or continued use of one or more other drugs and/or alcohol that is prohibited by the beneficiary's treatment plan. (*Enrollment Criteria for Methadone Maintenance and Detoxification Program, 01/01/2008 revision, p 6*)

The Respondent's representative ██████████ introduced evidence that the Appellant had been receiving its methadone treatment since at least ██████████ at which time she signed a Client's Responsibility form in which she agreed to not use illegal substances and to provide prescriptions for medication which may alter her drug screen. (Exhibit 1, Page 34)

The Respondent's representative ██████████ stated and offered evidence that when ██████████ performed Appellant's ██████████ review, her drug screens showed she tested positive for methadone, opiates, oxycodone, Darvocet, or benzodiazepine use for each of the twenty drug screens she had between ██████████ while receiving OMT from the Respondent. (Exhibit 1, Pages 2-21)

The Respondent's representative ██████████ stated that the Department's policy and the Client's Responsibility form both required Appellant to submit a copy of any prescriptions she had for drugs that showed on her drug screen. (*Enrollment Criteria for Methadone Maintenance and Detoxification Program, 01/01/2008 revision, p 4*)

The Respondent's witness ██████████ testified that she contacted Appellant and/or ██████████ to obtain prescription verification for benzodiazepine use, but did not receive any prescription documentation until after the termination notice was sent.

The Appellant testified that she takes Xanax medication prescribed by her primary care physician ██████████ and that is why benzodiazepines showed up on her drug screens. The Appellant denied use of oxycodone or other drugs but did not provide any evidence

to refute the repeated positive test results for non-prescribed drugs such as oxycodone and opiates.

12.1.C. ADMISSION CRITERIA

Reauthorization of services can be denied in situations where the beneficiary has:

- not been actively involved in their treatment, as evidenced by repeatedly missing appointments;
- not been participating/refusing to participate in treatment activities;
- continued use of substances and other behavior that is deemed to violate the rules** and regulations of the program providing the services.

Beneficiaries may also be terminated from treatment services based on these violations.


MPM, Mental Health/Substance Abuse Chapter, §§ 12.1.C, October 1, 2009, p 64. (Bold added.)

The overwhelming evidence shows that the Appellant did repeatedly test positive for opiates, oxycodone, Darvocet, or benzodiazepine use as demonstrated by drug screens from ██████████. The evidence also established that Appellant had provided no prescription verification for the Xanax, Darvocet or any other drugs found in her screens at the time of termination notice.

The Respondent provided sufficient evidence that its decision to terminate from OMT, including therapy, was proper and in accordance with Department policy. The Appellant did not prove, by a preponderance of evidence, that she complied with her outpatient methadone treatment program. This means that the ██████████ may terminate Appellant's outpatient methadone treatment.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Appellant's outpatient methadone treatment program.


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IT IS THEREFORE ORDERED THAT:

Respondent's decision is AFFIRMED.

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

cc:



Date Mailed: 11/12/2009

***** 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 & 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.