STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2009-35009 MCE
Case No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 [redacted]. [redacted] represented himself.

[redacted], represented the Department. [redacted], appeared as a witness for the Department.

ISSUE

Does the Appellant meet the requirements for a managed care exception?

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 is a [redacted] Medicaid beneficiary.

2. He is a member of the population required to enroll in a Medicaid Health Plan (MHP). Two requests for a medical exception were made on behalf of the Appellant.

3. The Appellant withdrew one request for medical exception that had been scheduled for hearing, pending a scheduled operation. (testimony from the Appellant)

4. A second request for medical exception was thereafter made on behalf of the Appellant, by [redacted]. This hearing does not address any prior request for medical exception because the hearing originally scheduled to address that request was voluntarily withdrawn by the Appellant.

5. The evidence of record does not establish the Appellant has a serious medical condition, rather he suffers from a chronic, ongoing medical condition that results in standard treatment. (Department Exhibit A, pages 8-9)

6. The request for medical exception at issue was filed by [redacted]. This provider participates in at least one Medicaid Health Plan available to the Appellant. (Department Exhibit A, page 13)

7. The evidence of record does not reveal the frequent and active treatment needed to allow for a medical exception. (Department Exhibit A, page 7).

8. On [redacted], the Appellant's request for a managed care exception was denied. The reasons stated in the denial are that Department records indicate the provider who submitted the request is a participating provider in a health plan available to the Appellant, that what his doctor sent in to the Department does not show frequent and active treatment and the records sent in describes standard treatment for chronic on-gong medical conditions.

9. On [redacted], the State Office of Administrative Hearings and Rules for the Department of Community Health received the Appellant's Request for Administrative Hearing.

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 154 of 2005 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 one (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, October 1, 2005, 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.

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, October 1, 2005, page 23, 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.

The Appellant asserts he qualifies for a medical exception because his condition is not stable. He said he does not know when he may need more surgery. He asserts he originally was granted the exception because he was denied access to medical treatment. He said his primary care physician is [redacted], who does not participate in any Medicaid Health Plans.

The Department witness stated for this hearing request, the only medical exception request considered was that sent in by [redacted]. It was revealed a prior medical exception request had been sent in by [redacted], been denied and scheduled for hearing. The hearing did not go

forward due to the fact that the Appellant withdrew his hearing request. This ALJ may only consider the request for medical exception before her at this hearing.

The material evidence of record is uncontested. It was submitted by [redacted] in support of the request for medical exception. The records submitted do not describe a serious medical condition as set forth in the policy specifically defining a serious medical condition for the purposes of determining whether a medical exception should be granted. This is not to say the Appellant's medical condition is minor, nor should be neglected or should not be treated. It is merely to say that the qualifying definition for the purpose of this policy has not been met. The Appellant is suffering discogenic syndrome. He has chronic back pain, intractable at times. The most recent medical information provided indicates his potential surgeon has recommended waiting before proceeding with surgery. He has recommended treatment with oral pain medication.

Additional evidence pertaining to the specific criteria does not establish frequent and active treatment as set for the criteria cited above. The request specifically states treatment is rendered "as needed." This is too ambiguous to evidence it conforms to the criteria.

Finally, [redacted] is a participating provider, as a specialist with a referral from a primary care doctor, in a Medicaid Health Plan, thus the final criteria is not satisfied either.

DECISION AND ORDER

There is no evidence in the record the Appellant satisfies all of the criteria set forth in Policy to be granted a medical exception. For the reasons stated above, the request for exception from Medicaid Managed Care was properly denied.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 11/23/2009

***** 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.