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. 2009-4332 MCE
Case No. [redacted]
Load [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]. The Appellant was represented by her spouse, [redacted]. The Appellant was present and testified. [redacted], represented the Department. His witness was [redacted].

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. At the time of hearing the Appellant is a [redacted]-year-old, disabled, FFS Medicaid beneficiary. (Appellant's Exhibit #1)

2. The Appellant resides in [redacted] and is in that population subject to mandatory MHP enrollment. (Department's Exhibit A, p. 4)

3. The Appellant is afflicted with; history of brain aneurism post repair with residual balance and speech problems, chronic abdominal pain, depression, anxiety and glaucoma. (Department's Exhibit A, pp. 10, 15)

4. On [redacted], the Department received the Appellant's requests for medical exception. The requests were forwarded to the Enrollment Services Division for evaluation. (Department's Exhibit A, pp. 10-15)

5. On [redacted], the Appellant's request was denied because the data from the Appellant was shown to describe standard treatment for a chronic on-going medical condition at more than monthly intervals. (Department's Exhibit A, pp. 4, 5, 10-15)

6. On [redacted], the Appellant was notified, in writing, that her request was denied. She was also advised of her further appeal rights. (Department's Exhibit A, pp. 16, 17)

7. On [redacted], SOAHR received the instant request for hearing from the Appellant. (Appellant's Exhibit #1)

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 246 of 2008 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, October 1, 2008, page 23, 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 (MD or DO) 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.

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.

If a beneficiary is enrolled in a MHP, and develops a serious medical condition after enrollment, the medical exception does not apply. The beneficiary should establish relationships with providers within the plan network who can appropriately treat the serious medical condition.

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, and/or the treatment.
>
> **Attending/Treating Physician**
>
> The physician (MD or DO) 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 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.
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> ***

The Department's witness, [redacted], testified that in order to receive an exception from managed care the Appellant must satisfy all three statutory criteria; seriousness, active treatment and a non-participating physician. *Supra.*

In this case, she explained, that an MSA physician, [redacted], agreed with her analysis which found that the Appellant's condition - once serious - was no longer active and now subject to standard medical management protocols. [redacted] testified that the Appellant's condition was now considered to be chronic and stable.

Furthermore, her medical treatment was neither active nor frequent as shown in [redacted] testimony. Her treatment intervals were bimonthly. *See* Department's Exhibit A, pp. 10 and 15.

The Appellant testified that she wanted to stay with her exisiting physicians, because they were knowledgeable about her condition and limitations. She added that feels secure and safe with her existing doctors.

On review, I gave the testimony of Department witness [redacted] controlling weight. She clearly explained that the Appellant failed to qualify for exception and that appropriate treatment could be received within the MHP. She added that the MHP is contractually obligated to provide up to 20 mental health visits per year and that further psychiatrist treatment would be the responsibility of the Appellant's local Community Mental Health office whether she was receiving care under FFS or MHP.

[redacted] her burden of proof.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for exception from managed care.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 2/11/2009

***** 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.