

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████
Appellant
_____ /

Docket No. 2009-19271 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 and testified on his own behalf.

██████████, appeared on behalf of ██████████, 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 ██████████.
2. While conducting the Appellant's two year evaluation for continued Methadone treatment, ██████████ ran a Michigan Automated Prescription Service (MAPS) report. The MAPS report revealed that the Appellant has a history of repeated and regular prescriptions for Ativan, Vicodin, Oxycontin and Xanax, and has twelve doctors prescribing these substances. In one instance, the Appellant received 90 Vicodin tabs, and then 4 days later, received another Vicodin prescription.

3. The Appellant has been asked on numerous occasions to have his primary care physicians or dialysis clinic perform toxicology screens, as required by the administrative rules requirements.
4. The Appellant has end-stage renal disease and is not voiding urine. (*Exhibit 1; page 14*) He has failed to arrange for, or submit to toxicology screening, via provision of blood samples.
5. On [REDACTED], 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:

(3) Continued behavior (non-threatening) interfering with the client's ability to participate in the clinical process, such as continued use of illicit drugs or misuse of alcohol, missing psychiatric/psychological appointments, and missing evaluation referrals.

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 it is having great difficulty determining whether the Appellant is remaining abstinent from unauthorized substances, and therefore in compliance with the program, because he has refused to arrange for blood toxicology screenings as provided by administrative rule. The Department further provided documentary evidence (MAPS report) evidencing the Appellant's continued use of illicit and/or unauthorized drugs, which taken in combination with Methadone, subject him to an elevated risk of overdose.

The Appellant claims he is not treating with 12 different physicians because his insurance would not pay for that many health care providers. He also claims he is the victim of identity theft, which explains why there are so many prescriptions for unauthorized controlled substances. He failed to address the issue of why he has not submitted to blood toxicology testing to determine his compliance with the Methadone program.

The preponderance of the evidence presented supports the Department's position. The Appellant has consistently violated the terms and conditions of this program, making administrative discharge due to clinical non-compliance appropriate.

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

[REDACTED]
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cc: [REDACTED]

Date Mailed: 6/29/2009

***** 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.