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. 2009-20109 SAS
Case No. [redacted]
Load 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 telephone hearing was held on [redacted]. [redacted] (Appellant) appeared and testified on his own behalf.

[redacted] appeared on behalf of the contracting agency (hereafter, 'Department').

ISSUE

Has the Department appropriately proposed termination of the Appellant from the Methadone maintenance treatment program?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a Medicaid beneficiary. He has been enrolled in the Methadone maintenance treatment program through [redacted].

2. The Appellant has participated in Methadone treatment since at least [redacted].

3. The Medical Director of the [redacted] program ran a Michigan Automated Prescription System (MAPS) report for the Appellant. The report revealed he has been prescribed benzodiazepines, opiate, narcotic and other medications containing opiate enhancing properties by several different physicians.

4. The MAPS report contained information that the Appellant was obtaining prescriptions for the same medication, acetaminophen/codeine from at least 2 different doctors.

5. The Appellant had a prescription for at least 100 acetaminophen/codeine tablets filled on [redacted] and [redacted] (370 tablets in 18 days).

6. The Appellant is also prescribed diazepam (valium) and carisoprodol (Soma). He is also taking methodone daily.

7. The Appellant asserts he has bone spurs resulting in pain. He asserts the medications are prescribed for the treatment of pain.

8. The Appellant has not denied having been prescribed the opiate medications by his physician.

9. The Appellant's drug screens have shown an absence of Methadone on [redacted], and [redacted]. The drug screen was absent methadone metabolite on [redacted]. The drug screen was positive for ecstasy on [redacted].

10. The Appellant was provided an Advance Action Notice, informing him he was being terminated from the Methadone Maintenance treatment program. The Appellant has been offered treatment for addition to prescription pain medication as an alternative to continuing use of both opiates, other narcotics and methadone simultaneously. The Appellant has refused the offer to higher treatment level (inpatient detoxification).

11. On [redacted], the Appellant filed his request for hearing with the State Office of Administrative Hearings and Rules.

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 administers the methadone maintenance treatment program in accordance with specific criteria. 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 behavioral 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.*

In this case the Department representatives assert the Appellant is endangering his own physical well being by obtaining and using an excessive amount of opiate and benzodiazepine based (narcotic) medications in conjunction with his Methadone. It is contrary to the treatment plan and goals of detoxification from opiates and Methadone. The Department witness submitted evidence this had been addressed with the Appellant and documented in the clinical notes of continued opiate use/abuse. The Department witness further cited to the MAPS report. The MAPS report evidences the Appellant has obtained a sufficient number and type of drugs of abuse to evidence use that is inconsistent with the goals of treatment. Specifically, the MAPS report evidences the Appellant has obtained literally hundreds and hundreds of tablets of opiates, narcotics and opiate enhancing drugs just since January of 2009. This is in addition to his continued use of methadone. The

uncontested evidence presented evidences the danger posed by continued use of the combination of drugs such as Soma, Valium and Codeine while taking methadone. The Department witnesses assert that his continued use of an excessive amount and type of prescription medication constitutes clinical non-compliance.

The Appellant did not dispute the evidence of the amount of medications he is taking. He asserted they are all for pain and necessary. He disputed ever taking ecstasy, which was found in a urine drug screen on one occasion. He denied diverting his methadone and said he drinks it right there at the clinic. He could not explain why it is not present in his urine sometimes.

The preponderance of the evidence presented supports the Department's position. The Appellant did not present evidence compelling a finding that he is clinically compliant with the Methadone maintenance program requirements. He is obtaining an excessive quantity of prescription medications from his providers. It is not proven his providers are aware he is accessing Methadone maintenance treatment or obtaining the same medications from other providers. A claim that all of the medication is authorized simply because it was prescribed is not credible. It is inconsistent with the goals and purpose of Methadone maintenance treatment. The quantity of the pills in conjunction with the use of Methadone at the same time evidences abuse of the medication sought. By engaging in conduct of continued abuse of controlled substances, the Appellant has violated the terms and conditions of this program, making administrative discharge due to behavioral non-compliance appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I find 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.

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

cc: [redacted]

Date Mailed: 7/13/2009

***** 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.