

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

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IN THE MATTER OF:

Docket No. 2010-13821 SAS
Case No. 78796324

██████████

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 ██████████ ██████████ appeared on his own behalf. ██████████, represented the Respondent

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. The Appellant is a ██████ year old male and Medicaid beneficiary.
2. The Respondent is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.
3. The Respondent provides outpatient methadone treatment to its consumers.
4. The Appellant has been participating in Methadone maintenance program at the Respondent substance abuse treatment center for at least three (3) years. (uncontested)
5. The Appellant was notified of the Respondent's treatment policy that prohibits use of other drugs that are not part of the client's treatment plan.

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6. The Appellant was placed on probationary status for continued methadone treatment in [REDACTED], due to toxicology results indicating he was using unauthorized medication/drugs.
7. The Appellant submitted positive toxicology results following being placed on probationary status.
8. The Appellant denied illicit drug use on [REDACTED], indicating he had stopped use of other medications due to his treatment status.
9. At hearing the Appellant asserted he was only taking lawfully prescribed medications. He further asserted they are prescribed for pain.
10. The Appellant had positive drug screens for opiates on [REDACTED], and [REDACTED].
11. The Appellant provided a handwritten note, purportedly from his doctor, indicating he is prescribed oxycontin 80mg, BID for pain relief. It is undated.
12. The Appellant has never submitted a prescription for the oxycontin, he is allegedly prescribed to the methadone clinic.
13. The Appellant did submit into the evidentiary record a pharmacy print out detailing the date, time, and prescribing doctor for his medications.
14. The pharmacy details provided by the Appellant indicate he was prescribed oxycontin by at least three (3) different doctors between [REDACTED] and [REDACTED]. [REDACTED] is listed as the prescribing doctor on [REDACTED] refill date. [REDACTED] is listed as the doctor on the [REDACTED] refill date. [REDACTED] is listed as the doctor on the [REDACTED] refill date.
15. The Substance Abuse Treatment Plan for the Appellant does not include use of Oxycontin. (Department exhibit A)
16. Appellant filed a Request for Administrative Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED]

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

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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 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.

The evidence in this case indicates Appellant has been in methadone treatment for at least three (3) years. The 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*)

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 Respondent's representative ██████████ introduced evidence that the Appellant had been receiving its methadone treatment for three (3) years. At the time treatment was commenced, the Appellant was apprised it constituted clinical non-compliance to use unauthorized medications without providing a prescription from the physician. The Respondent's witness further testified that drugs screens following placement on probation were positive for opiates. This is consistent with the use of oxycontin, however, no prescription had been provided. The Department's policy required the Appellant to submit a copy of any prescriptions he had for drugs that showed on is drug screen. (*Enrollment Criteria for Methadone Maintenance and Detoxification Program, 01/01/2008 revision, p 4*)


The Appellant testified in an inconsistent manner. He stated he had not been asked to sign a release form. He also testified he had actually signed a release form so that the doctor's office could be contacted and he does not know what happened after that. His case notes indicate he told his counselor that he did not know why his drug screens were positive because he had discontinued use of the other medications due to his participation in the methadone treatment clinic. At hearing he did not present that position. He said he had authorization for his use of oxycontin, not that he had stopped taking it. Because his testimony and other evidence was not found consistent, it lacks credibility. The handwritten note purporting to demonstrate he is using oxycontin for physical pain is undated and not found reliable. Furthermore, the pharmacy printout reveals three (3) different doctors have been listed as the prescribing doctor for this controlled substance. Finally, he contradicts himself. He failed to show the proposed termination from the drug treatment program for clinical non-compliance was improper because he did not present credible, substantial evidence of Department error. The Appellant did not prove, by a preponderance of evidence, that he complied with his outpatient methadone treatment program.

The overwhelming evidence shows that the Appellant did repeatedly test positive for opiate use as demonstrated by drug screens from ██████████ through ██████████. The evidence also established that the Appellant provided no prescription verification for the Oxycontin found in his 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.

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.

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

cc: 

Date Mailed: 3/11/2010

***** 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.