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. 2010-20596 MCE
[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], sister, appeared the Appellant's behalf. [redacted] appeared and testified. [redacted], brother in law, [redacted], mother, and [redacted], father, appeared as witnesses for the Appellant. [redacted], Appeals Review Officer, represented the Department. [redacted] Enrollment Services Specialist, 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. The Appellant resides in [redacted]. He is a member of the population required to enroll in a Medicaid Health Plan (MHP).

3. The Appellant has been enrolled in an MHP, [redacted], since [redacted]. (Exhibit 1, pages 8 and 11)

4. On [redacted] the Michigan Department of Community Health Enrollment Services Section received a managed care exception request filed on the Appellant's behalf. (Exhibit 1, page 7)

5. On [redacted], the Appellant's request for a managed care exception was denied. The denial notice indicated that no medical documentation was received to support the request. (Exhibit 1, pages 8-9)

6. On [redacted], Michigan Department of Community Health Enrollment Services Section received a second managed care exception request, which was also completed by the Appellant's medical provider, [redacted]. (Exhibit 1, page 10)

7. On [redacted], the Appellant's second request for a managed care exception was denied. The denial notice indicated that information provided by the doctor did not establish the requisite frequency of active treatment or a qualifying medical condition to allow for a medical exception. (Exhibit 1, pages 11-12)

8. On [redacted] the State Office of Administrative Hearings and Rules for the Department of Community Health received the Appellant's request for an Administrative Hearing. (Exhibit 1, page 6)

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 [redacted], 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 [redacted].

Michigan Public Act 131 of 2009 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 mandatory enrollment at least through the current prescribed course of treatment, subject to periodic review of continued eligibility.

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, January 1, 2010, page 30, states in relevant part:

> The intent of the medical exception process 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 is 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 only available 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.

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, January 1, 2010, pages 30- 31, 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

Fluctuates over time, but responds to well-known standard medical treatment protocols.

Active treatment

Active treatment is reviewed in regards to intensity of services when:

- 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 (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 is in the MHP provider network or is available on an out-of- network basis with one of the MHPs with 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's first request for a medical exception was denied because there was no medical documentation submitted. The Appellant's second request for medical exception indicates he is receiving treatment with office visits every three months for chronic and ongoing medical conditions including high cholesterol, degenerative joint disease, chronic pain, allergic rhinitis, and arthritis. [redacted] did not indicate whether or not he participates in any MHPs. (Exhibit 1, page 10)

In reviewing the Appellant's medical exception request, the Department confirmed that [redacted] does not participate in a MHP available to the Appellant in the county he currently resides in. However, the Department also determined that the Appellant did not meet the criteria for active treatment, meaning monthly or more frequently, based upon the submitted documentation. The Appellant's doctor indicated that he sees the Appellant every three months. The Department witness testified that the documentation also did not meet the criteria for a serious medical condition, as defined in Medicaid policy. The Department witness explained that based on the information provided by the doctor, the Appellant is receiving standard treatments for chronic medical conditions.

The Appellant and his representative disagree with the Department's denial of the medical exception request. The Appellant testified that he wants to see [redacted] because he is comfortable with him. The Appellant's representative explained that after a traumatic event in [redacted] the Appellant stopped seeing doctors and dentists for about [redacted]. She explained that due to the Appellant's fear, it took a lot to get him to see this doctor.

While this ALJ sympathizes with the Appellant's circumstances, the submitted documentation does not establish that the Appellant is receiving active treatment for a serious medical condition as defined in the above cited Medicaid policy. Accordingly, the Appellant does not meet all the criteria necessary to be granted a managed care exception. However, an alternative to changing doctors was discussed at the hearing. Open enrollment will occur in [redacted] which would allow the Appellant to change MHPs. The Department witness testified that this doctor does participate in a MHP that would be available to the Appellant if he moves from [redacted] to [redacted].

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Appellant does not meet the criteria for Medicaid Managed Care exception.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 5/7/2010

***** 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 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.