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. 2010-2215MCE
[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 appeared without representation. He had no witnesses. [redacted], appeals review officer, represented the department. His witness was [redacted], medical exception specialist, MDCH/MSA.

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 appeal the Appellant is a [redacted], disabled, Medicaid beneficiary. (Appellant's Exhibit #1)

2. The Appellant's Medicaid eligibility expired on [redacted]. (*See* Testimony of Miller)

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

4. The Appellant is afflicted with epilepsy. (Department's Exhibit A, p. 8)

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

6. On [redacted], the Appellant's request was denied because the data from the Appellant did not show frequent and active treatment needed to allow for a medical exception. (Department's Exhibit A, pp. 2, 9)

7. On [redacted], the Appellant was notified, in writing, that his request was denied. He was also advised of his further appeal rights. (Department's Exhibit A, pp. 9, 10)

8. [redacted] testified that should the Appellant reestablish Medicaid eligibility he would be able to receive treatment for his condition from an MHP in his county. (*See* Testimony of Miller)

9. 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[1], January 1, 2010, pages 30, 31, states:

1 This edition of the MPM is substantially similar to that in effect at the time the appeal was brought.

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.*

She explained further, that an MSA physician, [redacted], reviewed and agreed with her analysis which found that the Appellant's condition was no longer active and was now subject to standard medical management protocols. [redacted] testified that the Appellant's condition could be treated under a MHP – once the Appellant reestablished Medicaid eligibility and MHP enrollment.

The Appellant testified that he wanted to stay with the [redacted] system and that they only accept straight Medicaid.

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 once Medicaid eligibility is reestablished and the Appellant enrolls in one of the two MHP available in his county - specialty services would be available as would the MHP treatment option to refer out of network.

The Appellant failed to preponderate his 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: 1/8/2010

***** 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 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.