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. 2010–28811 SAS
Case [redacted]

[redacted],

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 on [redacted]. The Appellant appeared without representation. His witness was his mother, [redacted]. [redacted], customer service, represented the Respondent, (Venture), a Michigan Department of Community Health contracted provider of substance abuse services to Michigan's Medicaid population (Department). Her witnesses were [redacted], utilization management specialist and [redacted], nurse practitioner.

ISSUE

Did the Department properly propose termination of the Appellant's Opioid Maintenance Therapy (OMT)?

FINDINGS OF FACT

The Administrative Law Judge, base upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a [redacted] Medicaid beneficiary. (Appellant's Exhibit #1)

2. He is enrolled in the Great Lakes Health Plan since [redacted]. (Appellant's Exhibit #1)

3. The Appellant has been receiving OMT (methadone treatment) and ancillary services through the Harbortown clinic, and his physican since [redacted]. (Department's Exhibit A – throughout.)

4. A Michigan Automated Prescription System (MAPS) audit documented that the Appellant had been receiving additional dosing from his physican since [redacted]. (Department's Exhibit A, pp. 14 – 18)

5. Double dosing is prohibited under the OMT program. The Appellant was advised on the prohibition in writing and verbally – numerous times. (*See* Testimony and Department's Exhibit A, pp. 3, 4, 6, 7, 12 and 13)

6. Appellant presents as a person with multiple program absence. He testified that the "Kalamazoo" program kicked him out after giving other patients the benefit of the doubt – "but with me they went to the extreme." (*See* Testimony of the Appellant)

7. The Appellant said that his double dosing was intended as a stop gap so he wouldn't be late for work. Other test results showing Vicodin were caused by a painful dental issue which he failed to report. He added that his mother actually flushed the extra pills away. *See* Testimony.

8. The Department records show that the Appellant has had numerous warnings and self initiated program interruptions. (Department's Exhibit A, throughout)

9. On [redacted], the Appellant requested residential detox through Venture and then recanted a short time later. (Department's Exhibit A, pp. 33 – 48)

10. The Appellant advised the Department that he would receive his methadone from his medical doctor. (Department's Exhibit A, p. 1)

11. The Appellant was notified of his termination of OMT services by advance adequate action notice on [redacted], for non-compliance. His further appeal rights were contained therein. (Department's Exhibit A, p. 1)

12. The Appellant was offered a residential alternative treatment plan according to Wheeler, utilization management specialist – which he declined. *See* Testimony of Wheeler and Department's Exhibit A, p. 41

13. The instant request for hearing was received by the State Office of Administrative Hearings and Rules (SOAHR) on [redacted]. (Appellant's Exhibit #1)

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 statue, the Social Welfare Act (MCL 400.1 *et seq*), various portions of Michigan's Administrative Code (1979 AC, R400.1101 *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(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 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, pp. 26, 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. Medicaid Provider Manual, MPM, Mental Health/Substance Abuse Chapter, §12. *et seq* pp. 62 – 66, [redacted].

The Department witnesses testified that its termination decision relied on its Methadone authorization policy[1] and the incorporated criteria for administrative discharge, as follows:

> i. Clinical Noncompliance – A client's failure to comply with the provider's specific treatment protocol and/or Master Treatment Criteria, despite attempts to address such noncompliance, can result in administrative discharge… Such compliance issues are defined as, but limited to, the following:
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> ****

[1] The MDCH Enrollment Criteria for Methadone Maintenance and Detoxification

- Continued chronic use/abuse of one or more substances of abuse, despite regular clinical interventions, as defined in the individualized treatment plan and/or case file documentation. Department's Exhibit A, pp. 25, 26

Contractually, the PHIP must limit Medicaid services to those that are medically necessary and appropriate, and that conform to accepted standards of care. *See generally* 42 CFR 440.230.

The definition for Medical necessity is found in the MPM:

MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

DETERMINATION CRITERIA

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PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services that are:
- deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
- experimental or investigational in nature; or
- for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for
- medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis. (Emphasis supplied) MPM, medical necessity §§2.5 – 2.5.D, pp. 12, 13 April 1, 2010

[SUBSTANCE ABUSE SERVICES]

COVERED SERVICES - OUTPATIENT CARE

Medicaid-covered services and supports must be provided, based on medical necessity, to eligible beneficiaries who reside in the specified region and request services.

Outpatient treatment is a non-residential treatment service or an office practice with clinicians educated/trained in providing professionally directed alcohol and other drug (AOD) treatment.

The treatment occurs in regularly scheduled sessions, usually totaling fewer than nine contact hours per week but, when medically necessary, can total over 20 hours in a week. Individual, family or group treatment services may be provided individually or in combination.

Treatment must be individualized based on a bio-psycho-social assessment, diagnostic impression and beneficiary characteristics, including age, gender, culture, and development. Authorized decisions on length of stay, including continued stay, change in level of care and discharge, must be based on the American Society of Addiction Medicine (ASAM) Patient Placement Criteria. Beneficiary participation in referral and continuing care planning must occur prior to discharge.

ELIGIBILITY

Outpatient care may be provided only when:

- The service meets medical necessity criteria.
- The current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) is used to determine an initial diagnostic impression (also known as provisional diagnosis).
- The diagnostic impression must include all five axes.
- The service is based on individualized determination of need.
- The service is cost effective.
- The American Society of Addiction Medicine (ASAM) Patient Placement Criteria are used to determine substance abuse treatment placement/admission and/or continued stay needs.
- The service is based on a level of care determination using the six assessment
- dimensions of the current ASAM Patient Placement Criteria
- Withdrawal potential
- Medical conditions and complications
- Emotional, behavioral or cognitive conditions and complications
- Readiness to change
- Relapse, continued use or continued problem potential
- Recovery/living environment.

This service is limited to those beneficiaries who will benefit from treatment and have been determined to have:

- an acceptable readiness to change level;
- minimal or manageable medical conditions;
- minimal or manageable withdrawal risks;
- emotional, behavioral and cognitive conditions that will not prevent the beneficiary benefiting from this level of care;
- minimal or manageable relapse potential; and
- a minimally to fully supportive recovery environment.

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ADMISSION CRITERIA

Outpatient services should be authorized based on the number of hours and/or types of services that are medically necessary. Reauthorization or continued treatment should take place when it has been demonstrated that the beneficiary is benefiting from treatment but additional covered services are needed for the beneficiary to be able to sustain recovery independently.

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.

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(OPAT/CSAT) APPROVED PHARMACOLOGICAL SUPPORTS

Covered services for Methadone and pharmacological supports and laboratory services, as required by OPAT/CSAT regulations and the Administrative Rules for Substance Abuse Service Programs in Michigan, include:

- Methadone medication
- Nursing services
- Physical examination
- Physician encounters (monthly)
- Laboratory tests
- TB skin test (as ordered by physician)
- Opiate-dependent beneficiaries may be provided chemotherapy using methadone as an adjunct to therapy. Provision of such services must meet the following criteria:
- Services must be provided under the supervision of a physician licensed to practice medicine in Michigan.
- The physician must be licensed to prescribe controlled substances, as well as licensed to work at a methadone program.
- The methadone component of the substance abuse treatment program must be licensed as such by the state and be certified by the OPAT/CSAT and licensed by the Drug Enforcement Administration (DEA).

- Methadone must be administered by an MD/DO, physician's assistant, nurse practitioner, registered nurse, licensed practical nurse, or pharmacist.
- MDCH Enrollment Criteria for Methadone Maintenance and Detoxification Program (attached to the MDCH PIHP contract) must be followed.

EXCLUDED SERVICES

- Room and board;
- All other services not addressed within Covered or Allowable Services; and
- Medicaid Substance Abuse Services funded Outside the PIHP Plan.

MPM, Mental Health/Substance Abuse,
§12 *et seq.,* pp. 62-66, April 1, 2010

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The Department witnesses testified that their decision to terminate services related to the Appellant's continued double-dosing of methadone and the discovery of other restricted drugs in violation of OMT program requirements.

Residential services were thereafter offered to the Appellant – he accepted them and then rejected them stating he would get his medication from his physician.

The Appellant said that he needs helps with counseling to get through his addiction. However, he failed to preponderate that the department's decision was in error.

The Department witnesses provided ample documentary evidence and testimony to prove that its termination of OMT was proper and in accordance with Department policy. The provision of OMT was no longer medically necessary.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's OMT.

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: 06/29/2010

***** 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.