

**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. 2010-42021 SAS
Case No. 81318186**

██████████,

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 ██████████. ██████████ 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. Appellant is ██████████ and Medicaid beneficiary.
2. Appellant has at 35 year history of opioid dependency including I.V. heroin use; and in ██████████ a history of methadone, hydrocodone, Vicodin, Motrin, Xanax use, as well as other prescription medications, without proper documentation from a prescribing physician. (Exhibit 1, Pages 9, 10, 17-18, 22-23.)
3. ██████████ is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.

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4. [REDACTED] contracts with [REDACTED] to provide outpatient methadone treatment to [REDACTED] enrollees.
5. Appellant has been receiving outpatient methadone treatment (OMT) through [REDACTED] since at least [REDACTED]. (Exhibit 1, Pages 6, 17-18)
6. Appellant's participation in OMT requires prohibition from the use of alcohol or drugs not included in his treatment plan. (Exhibit 1, Page 2)
7. In violation of his OMT participation agreement Appellant had positive drug screens for methadone, opiates, oxycodone, Vicodin, or benzodiazepine for at least twenty drug screens between [REDACTED] and while receiving OMT from the Respondent. (Exhibit 1, Pages 3-12)
8. Appellant was placed on probation and violated his probation by continuing to use illicit drugs confirmed by positive urinalysis tests. (Exhibit 1)
9. Despite being repeatedly asked to provide a prescription for the drugs appearing in his urine, the Appellant did not provide a prescription for the illicit drugs he was taking at the same time as OMT treatment
10. On [REDACTED], the Appellant was given an Advance Action Notice, stating he would be terminated from the OMT program. The reason stated was: "Non-Compliance-Positive Toxicology Results." (Exhibit 1, Pages 23-24) The notice provided the right to request a fair hearing. (Exhibit 1, Pages 23-24)
11. Appellant filed a Request for Administrative Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED]. (Exhibit 1, Page 3)
12. After the Appellant filed his hearing request he submitted a prescription from a physician for methadone. (Exhibit 1, Page 24)

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

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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, 2010, 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, 2010, 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 a [REDACTED] history of substance abuse. Respondent contends that Appellant's OMT was appropriately terminated because the Appellant demonstrated continued clinical non-compliance.

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The Respondent testified that in part, its termination decision relied on the MDCH "Enrollment Criteria for Methadone Maintenance and Detoxification Program". (Exhibit 1, Page 2) 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*)

The Appellant was enrolled in the methadone maintenance treatment program at ██████████ since ██████████. The Respondent's representative testified that in the ██████████ months of the current treatment course, the Appellant continued to submit positive toxicology urinalysis screens for illicit drugs.

The methadone maintenance and detoxification program, as outlined in the Department's requirements, prohibits the use of illicit drugs not otherwise prescribed by a physician. Substantial compelling evidence submitted by the Department's agent established that the Appellant's provider repeatedly requested physician documentation for the illicit drugs that showed in his urine tests, along with an explanation from the Appellant's physician for why there was use of the illicit drugs along with methadone; a potentially harmful combination.

The Department's agent established by overwhelming credible evidence that despite months of repeated requests from the OMT provider to the Appellant for medical documentation for use of drugs not in his treatment plan, the Appellant failed to provide prescriptions for those drugs. The evidence showed that he had positive toxicology results on more than ██████████ occasions since ██████████. The overwhelming compelling evidence shows that the Appellant was notified he would be put on probation, and he signed a probation notification, yet failed to provide a doctor's prescription that had an explanation for use of illicit drugs in combination with methadone.

The Appellant testified that he should not be terminated from the methadone program because the termination resulted from a personality conflict with his counselor at the ██████████ provider. The overwhelming evidence shows that the Department policy requires physician documentation, therefore negating the

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excuse of a personality conflicts. Simply put, the Appellant was required to submit a doctor's written explanation for the use of illicit drugs concurrent with the use of methadone, and he failed to produce any documentation before he was terminated from the program on [REDACTED]. The evidence of record also establishes that the Department's agent issued a proper advance action notice of termination.

The Respondent provided sufficient evidence that its decision to terminate from OMT, including therapy, was proper and in accordance with Department policy. The Appellant did not prove, by a preponderance of evidence that he complied with his outpatient methadone treatment program. This means that the [REDACTED] properly terminated Appellant's outpatient methadone treatment.

DECISION AND ORDER

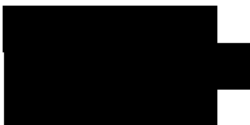
This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Appellant's outpatient methadone treatment program.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 11/3/2010

***** 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.