

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

P.O. Box 30763, Lansing, MI 48909  
(877) 833-0870; Fax: (517) 334-9505

**IN THE MATTER OF:**

**Docket No. 2010-49427 SAS**  
[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. She had no witnesses. [REDACTED], fair hearings officer, represented the Department. His witness was [REDACTED]. Also in attendance were [REDACTED], counselor, [REDACTED], rights advisor, and [REDACTED], program director.

**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 [REDACTED], 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 since [REDACTED]. (See Testimony)

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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.
6. The Appellant was terminated from continued participation in OMT by adequate action notice upon receipt of multiple toxicology reports showing positive testing results for Opiates and Benzodiazepines in contravention of ██████████ order. (Department's Exhibit A, attachment 1, 4, and 17)
7. The Appellant submitted positive toxicology results for Opiates and Benzodiazepines since ██████████. Department's Exhibit A, attachment 5.
8. The Appellant was shown, on MAPS inventory, as receiving multiple narcotics prescription from multiple doctors. (Department's Exhibit A, attachment 9)
9. The Appellant had agreed to utilize ██████████ as her primary care physician for treatment and to receive prescription medications solely from him. She was to further notify all other prescribing physicians of her choice of ██████████ as her primary care physician.
10. The Appellant did not provide the requested documentation.
11. One physician, ██████████ did contact the Department and advised that he was treating the Appellant and prescribing Vicodin ES for pain – and that there was no need for her to continue treatment with the clinic. (Department's Exhibit A, attachment 4, 17 and See Testimony of ██████████ )
12. On ██████████ after receipt of multiple toxicology reports showing positives for Opiates and Benzodiazepine the medical director, ██████████, requested that the Appellant provide him with a letter from all of her treating physicians documenting her current regimen of care and to notify all treating physicians that she had selected ██████████ as her primary care physician and sole medication prescriber. (Department's Exhibit A, p. 1)
13. Follow-up [on ██████████] from ██████████ showed that the Appellant had failed to carry through with her assignment – save one letter from ██████████ who was, however, unaware of the Appellant's participation in OMT. (Department's Exhibit A, attachment 4 and 17)
14. The Appellant said she had to beg to be seen by ██████████ for treatment. ██████████. ██████████ listed (3) three recent occasions when he rendered treatment to the Appellant; ██████████. Among other things he continued the Appellant's prescription for Ensure, other supplements, ordered assorted imaging and lab work. See Testimony.

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15. The Appellant contradicted her own testimony claiming that she only saw [REDACTED] once – and then at the close of her testimony said she saw him twice. (See Testimony)
16. The Department's decision on local appeal [REDACTED] was upheld. (Department's Exhibit A, attachment 9)
17. Appellant filed a Request for Administrative Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED]
18. On [REDACTED] she requested an expedited hearing, which was rescheduled to today's date.

**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 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 with MDCH to provide services under this waiver, as well as other covered services offered under the state Medicaid plan.

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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. Specific service and support definitions are set forth in the relevant sections of the Medicaid Provider Manual (MPM).

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. OPAT/CSAT-approved pharmacological supports encompass covered services for methadone and supports and associated laboratory services. MPM, Mental Health/Substance Abuse, §§ 12.1 – 12.2, July 1, 2010, pp. 62-65.

The evidence in this case indicates Appellant has been in methadone treatment for at least (4) four years. The Respondent contends that Appellant's OMT was appropriately terminated because the Appellant demonstrated continued medical clinical non-compliance and that the mixing of medications presented a serious risk of death or injury to the Appellant.

The Respondent testified that in part, its termination decision relied on the MDCH Office of Drug Control Policy-Treatment Policy-05 the policy 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.

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- Failure to manage medical concerns/conditions, including adherence to physician treatment services and prescription medications, that may interfere the effectiveness of methadone treatment and/or the continued use of methadone, and may present a physical risk to the client.

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Department Exhibit A, attachment 2

This policy is in accord with the Medicaid Provider Manual that describes criteria for service denial and terminations when the beneficiary is non-compliant:

### 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. MPM, *Supra*, p. 64

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The Respondent's representative [Jones] introduced evidence that the Appellant had been receiving its methadone treatment for four years. It was discovered that the Appellant was still testing positive for Opiates and Benzodiazepines and was using several physicians and pharmacies for obtaining multiple prescriptions of alprazolam and hydrocodone bitartrate.

The Respondent's witness, Medical ██████████, testified he treated the Appellant pursuant to their agreement that he was to act as the Appellant's primary care physician and sole prescriber of medications. When the Appellant failed to produce written documentation of notice to her other prescribing physicians and when ██████████ discovered [on follow-up] that the Appellant had actively concealed her status as a recipient of OMT at the ██████████ Industrial ██████████ – termination processes were initiated as it became clear that the Appellant was medically non-compliant and was still actively mixing medications.

The Appellant testified in an inconsistent manner. She did not know how many times she saw ██████████. She said she had to beg for treatment – yet the medical director was able to recall recent treatment history, tests and lab work, all ordered for the Appellant.

She said further that she didn't provide letters from her other prescribing physicians because the doctor charged a fee for writing such letters and she was impoverished. However, at or about the same time the MAPS report showed that the Appellant was making mostly private payment on her multiple drug prescriptions. Because her testimony and other evidence was inconsistent, it lacks credibility. Furthermore, the pharmacy printout reveals (5) five different providers prescribing assorted quantities of alprazolam and hydrocodone bitartrate.

The Appellant failed to show the proposed termination from the OMT program for non-compliance was improper because she did not present credible, substantial evidence of Department error. The Appellant did not prove, by a preponderance of evidence that she complied with the requirements of her outpatient methadone treatment program. See Department's Exhibit A – throughout.

The overwhelming evidence shows that the Appellant did repeatedly test positive for opiate use and then failed to produce exclusionary letters from other prescribing and treating physicians in contravention to orders from ██████████, medical director for the clinic.

The Respondent provided sufficient evidence that its decision to terminate the Appellant from OMT and then refer her to a less intensive level of care 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 from OMT.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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Dale Malewska  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

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cc:

Date Mailed: 9/27/2010

**\*\*\* 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.