

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

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IN THE MATTER OF:

██████████

Appellant

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Docket No. 2010-26898 MCE  
Case No. ██████████

**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 ██████████. ██████████ appeared on her own behalf. ██████████, Appeals Review Officer, represented the Department. ██████████ 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 ██████████ Medicaid beneficiary.
2. The Appellant resides in ██████████. She is a member of the population required to enroll in a Medicaid Health Plan (MHP).
3. The Appellant has been enrolled in an MHP, ██████████, since ██████████ (Exhibit A, page 10)
4. On ██████████ the Michigan Department of Community Health

Enrollment Services Section received a managed care exception request from the Appellant's doctor. The doctor indicated that the Appellant had multiple medical problems that are not covered under her current program. (Exhibit A, page 9)

5. On ██████████ the Appellant's request for a managed care exception was denied. The denial notice indicated that the Appellant's doctor does not participate in the MHP the Appellant is enrolled in for established patients. The denial notice also stated that the doctor did not specify what the Appellant's multiple medical conditions are and why he believes they would not be covered under the MHP. (Exhibit A, pages 10-11)
6. On ██████████ the State Office of Administrative Hearings and Rules for the Department of Community Health received the Appellant's request for an Administrative Hearing. (Exhibit A, pages 7-8)

### **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 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 request for medical exception indicates she suffers from multiple medical problems and lists four medications in the treatment plan. The Appellant's doctor marked that he does not work with many of the MHPs. (Exhibit A, page 9)

In reviewing the Appellant's medical exception request, the Department confirmed that the Appellant's doctor does participate, for established patients, in at least one MHP available to the Appellant in the county she currently resides in. Further, the MHP the Appellant's doctor works with is the same MHP the Appellant is enrolled in. (Exhibit 1, pages 12-13)

The Department witness explained that the documentation submitted did not establish that the Appellant was undergoing active treatment for a serious medical condition with a physician who does not participate in at least one MHP available to the Appellant. The Appellant's doctor did not specify what medical problems the Appellant has, nor describe the severity, complexity, treatment plan and medical provider(s). However, the Department witness testified that the MHP has several specialists available to treat specialty care

needs.

The Appellant disagrees with the Department's denial of the medical exception request. The Appellant explained that she has several chronic medical conditions and that need treatment. The Appellant stated she needs to go see doctors to improve her health so that she will be able to care for her disabled daughter. The Appellant wants to return to specialist doctors she saw in the past however, several of these specialists do not work with the MHP. The Appellant stated that the MHP wants her to see other specialists who participate with their plan. The Appellant explained that she will not go one of the places the MHP listed as a participating provider because there were serious problems when she previously received treatment at that facility.

While this ALJ sympathizes with the Appellant's circumstances, the Appellant does not meet the criteria necessary to be granted a managed care exception. The submitted documentation does not establish that the Appellant is currently receiving active treatment for a serious medical condition from a doctor who does not participate in at least one MHP available to the Appellant.

**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.

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


cc:



Date Mailed: 6/10/2010

**\*\*\* 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

  
Docket No. 2010-26898 MCE  
Decision and Order

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.