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:

[redacted],

Appellant

_____/

Docket No. 2010-36117 BM
Case No. [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.

After due notice, a hearing was held [redacted]. The Appellant was represented by his sister, [redacted]. [redacted], Appeals Review Officer, represented the Department. Her witness was [redacted], RN, beneficiary monitoring unit/MDCH.

ISSUE

Did the Department of Community Health properly propose the enrollment of the Appellant into the Beneficiary Monitoring Program?

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]-year-old Medicaid beneficiary.

2. On [redacted] the Medical Services Administration's Beneficiary Monitoring Unit sent the Appellant a letter informing him it appears as if he is misusing/abusing emergency room and physician services. The Appellant was disenrolled from Health Plan of Michigan [redacted] for alleged inappropriate use of the emergency room and prescription medications/drugs subject to abuse.

3. The above referenced letter advised the Appellant that he had 30-days to respond with information explaining the reason for his frequent and

apparent excessive use of emergency room/physician services. He was specifically asked to provide records indicating his doctors were in communication with each other regarding his medical needs.

4. In response to the request for medical information explaining the apparent excessive use of physician and emergency room benefits, the Appellant requested a formal, administrative hearing. The request was received [redacted].

5. The Appellant made 8 emergency room visits between [redacted], and [redacted].

6. During 3 of the 8 emergency room visits the Appellant made between [redacted] and [redacted], he was engaged in tampering with his patient controlled anesthesia pump. The police were notified of one of the incidents.

7. The MAPS report of the Appellant's pharmacy use during the time period between [redacted] and [redacted], indicates he obtained 300 tablets of Oxycodone, 270 tablets of morphine at 15mg each and 110 tablets of morphine at 60mg each. The total number of prescription pills subject to abuse obtained by the Appellant during the 3 months time period is 680.

8. The Appellant obtained these prescriptions from 4 different doctors and 3 different pharmacies during the 3 month time period.

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.

> The Code of Federal Regulations mandates that the state implement measures to ensure the integrity of the Medicaid program, including procedures to safeguard against unnecessary utilization of care and services.
>
> 42 CFR 456.1

Furthermore, the state's implementation of the federal mandate is reflected in the following Department policy:

> **BENEFICIARY MONITORING PROGRAM**
>
> State and federal regulations require Michigan Department of Community Health (MDCH) to conduct surveillance and utilization

review of Medicaid benefits to ensure the appropriate amount, scope, and duration of medically necessary services are being provided to Medicaid beneficiaries. The objectives of the Beneficiary Monitoring Program (BMP) are to reduce overuse and/or misuse of Medicaid services (including prescription medications), improve the quality of health care for Medicaid beneficiaries, and reduce costs to the Medicaid program. To accomplish these objectives, MDCH:

- Identifies Fee For Service (FFS) beneficiaries who appear to be overusing and/or misusing Medicaid services.

- Evaluates the Medicaid services to determine whether the services are appropriate to a FFS beneficiary's medical condition(s).

- If it is determined that a Medicaid FFS beneficiary is overusing and/or abusing Medicaid services, the beneficiary may be subject to a utilization control (lock-in) mechanism. There are two types of utilization control mechanisms for BMP:

  - Pharmaceutical Lock-In is used for beneficiaries who are abusing and/or misusing drugs listed in the Drug Categories subsection below.

  - Restricted Primary Provider Control is used for beneficiaries who are misusing and/or abusing Medicaid services other than pharmaceuticals.

- Monitors FFS beneficiaries in the control mechanism to determine whether control is effective and, if not effective, makes appropriate changes . . . .

Medicaid Provider Manual, (MPM)
Beneficiary Eligibility, §8, April 1, 2009, page 17.

ENROLLMENT CRITERIA

The following criteria are used to determine whether a beneficiary may be placed in the Pharmaceutical Lock-In or Restricted Primary Provider Control mechanism. The dosage level and frequency of prescriptions, as well as the diagnoses and number of different prescribers, are reviewed when evaluating each individual case.

[ ] DISENROLLMENT FROM A MEDICAID HEALTH PLAN

MDCH has disenrolled the Medicaid beneficiary from an MHP for one of the following:

- Noncompliance with physician/drug treatment plan.
- Noncompliance with MHP rules/regulations for pharmacy lock-in.
- Suspected/Alleged fraud for altered prescriptions.
- Suspected/Alleged fraud for stolen prescription pads.

[ ] CONVICTED OF FRAUD

The beneficiary has been convicted of fraud for one of the following:

- Selling of products/pharmaceuticals obtained through Medicaid.
- Altering prescriptions used to obtain medical products or pharmaceuticals.
- Stealing prescription pads.

[ ] INAPPROPRIATE USE OF EMERGENCY ROOM SERVICES

- More than three emergency room visits in one quarter.
- Repeated emergency room visits with no follow-up with a primary care physician.
- More than one outpatient hospital emergency room facility used in a quarter.

[ ] INAPPROPRIATE USE OF PHYSICIAN SERVICES

- Utilized more than three different physicians in one quarter.
- Utilized more than two different physicians to obtain duplicate services for the same health condition or prescriptions for the drug categories defined below.
- Utilized multiple physicians for vague diagnosis (e.g., myalgia, myositis, sinusitis, lumbago, migraine) to obtain drugs from the drugs categories defined below.

[ ] INAPPROPRIATE USE OF PHARMACY SERVICES

- Utilized more than three different pharmacies in one quarter.
- Aberrant utilization patterns for drug categories noted below over a one-year period.
- Obtained more than 11 prescriptions for drugs identified below in one quarter (including emergency prescriptions).

[ ] DRUG CATEGORIES

MDCH considers the following categories of drugs to be subject to abuse. Beneficiaries obtaining these products and meeting the criteria above may be subject to enrollment in the BMP.

- Narcotic Analgesics
- Barbiturates
- Sedative-Hypnotic, Non-Barbiturates
- Central Nervous System Stimulants/Anti-Narcoleptics
- Anti-Anxieties
- Amphetamines
- Skeletal Muscle Relaxants

[ ] PHARMACEUTICAL LOCK-IN CONTROL MECHANISM

Michigan's Pharmacy Benefits Manager maintains a real-time screen of all point of sale (POS) prescription drug claims for MDCH. Requests for prescriptions (including emergency prescriptions for the therapeutic drug categories listed above) are evaluated against other prescriptions filled for the beneficiary and paid by Medicaid in the last 34 days.

Beneficiaries are not allowed to fill or refill prescribed medications in the drug categories listed above until 95 percent of the medication quantity limits would have been consumed in compliance with the prescribed dose, amount, frequency and time intervals established by the MDCH.

No overrides are allowed for beneficiaries enrolled in the BMP except when authorized by the MDCH . . . .

[Emphasis supplied] MPM, Beneficiary Eligibility, §§8.1 through 8.3.

***

The Department provided credible evidence that during the period of review the Appellant obtained excessive amounts of drugs subject to abuse [860 pills] paid for in part by Medicaid, through multiple physicians. The Department witness testified that during the utilization review period the Appellant used 4 different doctors and three different pharmacies to obtain the above referenced medications.

Additionally, evidence was presented establishing the Appellant had tampered with his medication pump while in the emergency room on 3 different occasions. The tampering may have been an attempt to remove the medication contained in the pump. This is supported by the Appellant's urine analyses, which were negative for the prescription medications and positive for marijuana. Finally, the Department witness stated the Department is concerned the Appellant's pain crisis are managed appropriately and effectively and having one provider oversee his care will aid in accomplishing that goal.

The Appellant's representative testified her brother suffers sickle cell and has uncontrollable pain crisis as a result. She stated he has to seek emergency room treatment when he experiences a pain crisis. Furthermore, he smokes marijuana to

stimulate his appetite.

I find that the credible evidence presented by the Department shows that the Appellant's use of 4 different doctors meets the criteria for abuse of physician services. Additionally the evidence of 8 emergency room visits in the quarter satisfies the criteria for abuse of emergency room services. The Department provided sufficient credible evidence that the Appellant's overuse of physician and emergency room services meets the criteria for enrollment in the Beneficiary Monitoring Program, thus the Department's action is appropriate. The Department's action in no way limits the Appellant's ability to obtain all medically necessary treatment. His pain crisis will be addressed by the physician managing his medical treatment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly proposed the enrollment of the Appellant into the Beneficiary Monitoring Program.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 8/10/2010

***** 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 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.