**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. 2011-11504 DISC
Case No. 80362967

## 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 [redacted]. [redacted] appeared on the Appellant's behalf. [redacted] represented the Department. [redacted] appeared as a witness for the Department. The hearing record was left open for two weeks to allow the Appellant's representative to receive a copy of the Department's Exhibits and submit a written response. No response was received.

## ISSUE

Did the Department properly deny Appellant's requests to receive a Medical Exception or Special Disenrollment-For Cause from a Managed Care 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 [redacted] Medicaid beneficiary who has been enrolled in [redacted] a Medicaid Managed Health Care Plan (MHP), since [redacted]. (Exhibit A, page 2)

2. The Appellant resides in [redacted] Michigan. She is a member of the population required to enroll in a Medicaid Health Plan (MHP).

3. On [redacted] the Department's enrollment services section received the Appellant's Special Disenrollment-For Cause Request with

attached documentation, indicating that she wants to switch out of a health plan to straight Medicaid. (Exhibit 1, pages 14-20 and 22)

4. On [redacted], the Michigan Department of Community Health Enrollment Services Section received a managed care exception request from the Appellant's medical provider, [redacted]. The same additional documentation was attached. (Exhibit 1, page 13-20)

5. The Department reviewed both requests.

6. On [redacted], the Appellant's request for a managed care exception was denied. The denial notice indicated that the Appellant had been enrolled in the MHP for more than 2 months and the medical exception process is for newly eligible beneficiaries who are not yet enrolled in an MHP or just recently enrolled into one. The notice acknowledged that the Appellant has a serious medical condition, but this alone does not allow for a medical exception. The notice stated that the Appellant's provider participates with at least one MHP available to the Appellant, as a specialist with a referral from the primary care doctor. (Exhibit 1, pages 38-39)

7. On [redacted] the Department denied the Appellant's Special Disenrollment-For Cause request because the medical information provided was from a doctor who does participate with the MHP or accepts referrals and did not describe an access to care/services issue that would allow a change in health plans outside of the open enrollment period. (Exhibit 1, page 21)

8. On [redacted] the Department received the Appellant's request for a formal administrative hearing.

## 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.

The Department of Community Health, pursuant to the provisions of the Social Security Act Medical Assistance Program, contracts with the Medicaid Health Plan (MHP) to

provide State Medicaid Plan services to enrolled beneficiaries. The Department's contract with the MHP specifies the conditions for enrollment termination as required under federal law:

> Disenrollment Requests Initiated by the Enrollee
>
> Disenrollment for Cause
>
> The enrollee may request that DCH review a request for disenrollment for cause from a Contractor's plan at any time during the enrollment period to allow the beneficiary to enroll in another plan. Reasons cited in a request for disenrollment for cause may include lack of access to providers or necessary specialty services covered under the Contract or concerns with quality of care. Beneficiaries must demonstrate that appropriate care is not available by providers within the Contractor's provider network or through non-network providers approved by the Contractor.
>
> *Comprehensive Health Care Program contract effective 10/1/2009 to 09/30/2010, Exhibit 1, page 19.*

Regarding Medical Exception Requests, 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, October 1, 2010, page 31, 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, October 1, 2010, pages 31-32, 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.

In this case, the Department received Appellant's Medical Exception Request and a Special Disenrollment-For Cause Request indicating she wants to switch out of a MHP and into straight Medicaid. The Department considered both requests, despite the Appellant having been enrolled in the MHP for well over 2 months when the Medical Exception Request was filed. While the Department acknowledged that the Appellant has a serious medical condition, the documentation submitted was provided by a doctor who is available to the Appellant through the MHP. Accordingly, the Appellant did not meet the criteria for a Medical Exception. Further, the MHP has assigned a case manager and transplant coordination has been authorized out of the network. Since there was no evidence that the MHP has not provided a Medicaid covered service or that there is a current access to care/services issue, the Appellant's special disenrollment request was denied. ([redacted] Testimony)

The Appellant's [redacted] disagrees with the denials and testified that there have been delays in the Appellant's treatment due to the MHP process, which has been very stressful. She stated that all the Appellant's providers accept straight Medicaid. However, the issues with delays in treatments that require prior authorization could also occur with straight Medicaid coverage. Straight Medicaid also has prior authorization requirements for some treatments/medications.

The Appellant's preference to change to straight Medicaid coverage is not sufficient to meet the criteria for special disenrollment or a medical exception. The medical documentation showed active treatment of a serious medical condition, but with a physician who does participates in the MHP. No unresolved issue with access to Medicaid covered services or to specialty providers was documented. The Appellant has access to providers and/or necessary specialty services with the MHP. The Department's denials of the requests for a medical exception or a special disenrollment must be upheld.

## DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's requests to receive a Medical Exception or Special Disenrollment-For Cause from a Managed Care Program.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 3/2/2011

***** 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.