STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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],

Docket No. 2011-22212 MCE
Case No. [redacted]

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant, [redacted], was present for the hearing. She was represented by her husband, [redacted]. [redacted] represented the Department. [redacted], appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's request for a managed-care exception?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a [redacted] Medicaid beneficiary.

2. The Appellant resides in [redacted], Michigan. She is a member of the population required to enroll in a Medicaid Health Plan (MHP). She was originally enrolled in [redacted]. She is currently enrolled in the [redacted]. (Exhibit 1, page 2; Testimony of [redacted])

3. The Appellant requested a managed-care exception through her physician, [redacted], on [redacted]. (Exhibit 1, page 10)

4. On [redacted], the request for a managed-care exception was denied. The denial notice indicated that the Appellant's condition is chronic in nature and her physician is a participating provider.[1] Therefore, the Appellant did not meet the criteria for an exception. (Exhibit 1, pages 11-12)

5. On [redacted], the Michigan Administrative Hearing System for the Department of Community Health received the Appellant's Request for an Administrative Hearing. (Exhibit 1, pages 6-9)

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 2010 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 one (1) of the HMOs. If the person meets the criteria established by this subsection, the department shall grant an exception to managed care 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, 2011, pages 31-32, state in relevant part:

> The intent of a medical exception 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 was enrolled in a MHP. The medical exception

1 The Department did not pursue this second ground at hearing. After receiving the hearing request, the Department was made aware that the doctor no longer participates with any MHPs.

may be granted on a time-limited basis necessary to complete treatment for the serious condition. The medical exception process is available only 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, whichever occurs first.

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.

* * *

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

Fluctuate over time, but responds to well-known standard medical treatment protocols.

Active treatment

> Active treatment is reviewed in regards to intensity of services.
>
> 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, the treatment, or both
>
> The treatment or therapy is extended over a length of time.
>
> **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 or she is in the MHP provider network or is available on an out-of-network basis with one of the MHPs for 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 Department witness explained that based on the information provided by her physician, the Appellant is receiving treatment for multiple medical conditions, including fibromyalgia, TMD, vertigo, hypothyroidism, GERD, depression, anxiety, COPD, heart problems, anemia, and low potassium. However, she further explained that these chronic conditions do not satisfy the criteria for a serious medical condition, as defined in Medicaid policy, because the Appellant is receiving standard treatment for these ongoing conditions. Accordingly, all of the criteria for a medical exception have not been met.

The Appellant disagrees with the denial of her request. Her husband testified that she has been treating with her physician for [redacted] and that she wishes to stay with him so that she can maintain continuity of care. The Appellant's husband stated that the Appellant is concerned that she will have serious health problems if she has to switch physicians because she does not believe that she will be treated properly. He testified that since she has been treating with a new physician, her blood pressure has been affected.

The record evidence supports the Department's determination that the Appellant suffers

from chronic, ongoing medical conditions. The burden of proof rests with the Appellant to establish that the Department's decision is incorrect. The Appellant has not met this burden. Accordingly, the request for exception from Medicaid managed care was properly denied.

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 a Medicaid managed-care exception.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 5/23/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.