

**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:

Docket No. 2011-25118 SAS
Case No. 10126249

██████████

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 ██████████. ██████████ appeared on his own behalf. ██████████ represented the Respondent ██████████.

ISSUE

Did the Respondent properly terminate the 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 ██████████ and 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 the methadone maintenance program at the Respondent substance abuse treatment center since at least ██████████. (testimony of ██████████)
5. The Appellant was notified of the Respondent's treatment policy that prohibits possession of a weapon or controlled substance, inappropriate behavior such as cursing, threatening, sexual harassment, destruction of property, theft or

- any illegal, unethical or immoral acts on the premises of the treatment location.
6. The Appellant was placed on probationary status for several noted violations including: attendance problems/failure to commit to counseling; illicit drug use as evidenced by urine drug screen results indicates (sic) the presence of illicit drugs (non-prescription) which includes cocaine and no methadone; behavior problems; loitering, verbal abuse, threats of physical harm against any staff member or client(s); diversion of medication or urine, including submitting urines which have been tampered with, or brought into the clinic; abuse of alcohol; failure to follow-up on a medical referral and being on the premises on days the beneficiary does not dose. (Respondent's Exhibit A)
 7. The Appellant has solicited other program participants for purchase of illicit drugs and threatened to physically harm staff when confronted about his behavior. (Respondent's Exhibit A)
 8. At the hearing the Appellant asserted he was only trying to sell his pit bull puppies.
 9. The Appellant was notified he would be discharged from treatment ██████████. (Respondent's Exhibit A)
 10. The Appellant appealed his discharge from treatment. Following a local appeal, the discharge was upheld. (Respondent's Exhibit A)
 11. The Appellant requested a formal administrative hearing ██████████.

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 in patient health plan (PIHP) contracts (Contract) with MDCH to provide services under this waiver, as well as other covered services offered under the state Medicaid plan.

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. *Contract FY 2009, Part II, Section 2.1.1, p 27.* Specific service and support definitions included under and associated with state plan responsibilities are set forth in the Mental Health/Substance Abuse Chapter of the Medicaid Provider Manual (MPM). *Contract FY 2009, Part II, Section 2.1.1, p 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. *MPM, Mental Health/Substance Abuse Chapter, §§ 12.1, October 1, 2009, pp 64.*

OPAT/CSAT-approved pharmacological supports encompass covered services for methadone and supports and associated laboratory services. *MPM, Mental Health/Substance Abuse Chapter, §§ 12, October 1, 2009, OPAT/CSAT subsection.* Opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy.

The evidence in this case indicates the Appellant has been in methadone treatment for at least seven (7) years. The Appellant is well aware of the policies governing participation in the program. The substantial and credible evidence presented by the Department demonstrates the Appellant has violated several conditions of treatment participation in the program, including making threatening statements to a staff member who confronted him about policy violations. Additionally, he had been notified of several other violations and placed on probation status for failure to attend and/or commit to counseling, loitering, alcohol abuse and diversion of medication or urine.

The Appellant's testimony was accepted into the record and considered. It is not found credible. He asserted he was merely trying to sell puppies yet is contradicted by several participant witness statements as well as a documented staff report indicating he was attempting to sell illicit drugs in the parking lot. He has been a participant for at

least 7 years, thus is known to staff. Furthermore, he undermined his own credibility by failing to disclose truthfully how long he had been a program participant. He stated on the record it had been nearly a year. Then he stated maybe it had been a full year. The program director stated he had records indicating he had been in treatment since at least ████████. The Appellant's inaccurate testimony could not reasonably be believed to be an honest mistake. There is no mistaking 7 years for a year. Additionally, it is unlikely an honest attempt to sell or give puppies away is to be mistaken for soliciting other program participants for illicit drug purchases. His testimony lacked credibility in the opinion of this ALJ and is not relied upon to make material factual findings

The Medicaid Provider Manual has stipulations about participation in the program and allows for discharge under certain circumstances. Pertinent portions are below:

12.1.C. ADMISSION CRITERIA

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, Mental Health/Substance Abuse Chapter, §§ 12.1.C,
October 1, 2009, p 64. (Bold added.)*

The credible evidence shows that the Appellant did fail to adhere to program requirements even after being placed on probationary status. He has failed to participate in counseling and maintain regular attendance for counseling. He has been on the property when he was not scheduled to dose. He made verbal threats to staff and attempted to sell illicit drugs. All of these behaviors are violations which can result in discharge from the program.

The Respondent has provided sufficient evidence that its decision to terminate from OMT, including therapy, 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's outpatient methadone treatment program.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 4/28/2011

***** 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 & 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 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.