STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2011-29595 MCE
Case No.

Appellant
_____________________________/

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 . , wife, appeared on the Appellant's behalf. , the Appellant, appeared and testified. , represented the Department. , 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 year-old Medicaid beneficiary. (Exhibit 1, page 7)

2. The Appellant resides in , Michigan. He is a member of the population required to enroll in a Medicaid Health Plan (MHP).

3. The Appellant was enrolled in effective , through . (Enrollment Services Specialist Testimony)

4. On , and , the Michigan Department of

Community Health Enrollment Services Section received managed care exception requests from the Appellant's medical providers, (Exhibit 1, pages 7-10)

5. On , the Appellant's requests for a managed care exception were denied. The denial notice indicated: the Appellant has been enrolled in for more than 2 months; the information sent in shows standard treatment for a chronic on-going medical condition(s) or the routine monitoring of an on-going medical condition; is a participating provider as a specialist with a referral from the primary care doctor in at least one Medicaid Health Plan available to the Appellant; works with , which the Appellant can enroll in; the information sent in does not show the frequent and active treatment needed to allow for a medical exception; and medical exceptions are not for mental health care needs. (Exhibit 1, pages 11-12)

6. On , the Appellant's Request for Hearing was received. (Exhibit 1, page 6)

7. During the open enrollment period, the Appellant changed to effective . (Enrollment Services Specialist Testimony)

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, 2011, page 31, states in relevant part:

> **9.3 Medical Exceptions to Mandatory Enrollment**
>
> 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.
>
> If a beneficiary is enrolled in a MHP, and develops a serious medical condition after enrollment, the medical exception does not apply. The beneficiary should establish relationships with providers within the plan network who can appropriately treat the serious medical condition.

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, January 1, 2011, pages 31-32, states in relevant part:

9.3.A Definitions

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 a medical exception indicates that he suffers from several medical conditions including multiple disk bulges and herniations in lumbar spine, compression fracture of L_1, sciatica, head injury, PTSD, depression, dizziness/lightheadedness, hypertension, and left shoulder tendonitis. (Exhibit 1, pages 7-10) Dr. Lerner indicated he sees the Appellant monthly and participates in a . (Exhibit 1, page 7) indicated he sees the Appellant every three months and does not participate in any Medicaid Health Plans. The treatment plan with was described as TENS, hearing pad, cane, and eventually surgery. (Exhibit 1, page 10)

In reviewing the Appellant's medical exception request, the Department noted that the request for the medical exception was received after the two month period allowed by the Medicaid policy. The Department further verified that is a participating provider in at least one Medicaid Health Plan available to the Appellant, . (Exhibit 1, page 14) The information provided by and . could not be considered because the criteria for a medical exception specifies that a treating physician is an M.D. or D.O. (Enrollment Services Specialist Testimony) The information provided by did showed standard treatment for chronic medical conditions every three months, rather than active treatment for a serious medical condition as defined in the Medicaid Provider Manual policy. (Exhibit 1, page 10 and Enrollment Services Specialist Testimony) Accordingly, the Department determined that the Appellant did not meet the criteria for a medical exception to mandatory enrollment.

The Appellant disagrees with the Department's determination. The Appellant's wife testified that these are treating doctors and they are trying to help the Appellant. The Appellant testified that he has switched to because accepts this Medicaid Health Plan. He explained that he was injured due to an auto accident and wanted to know how he can get assistance to see the other three doctors. The Enrollment Services Specialist testified that Medicaid does not cover chiropractors, but he could check with to see if they will cover this. She also explained that the Appellant may need to see through Community Mental Health. The Appellant would also have access to orthopaedic specialists through the MHP. The Appellant may also wish to contact and request a nurse care manager to assist with coordinating his care. (Enrollment Services Specialist Testimony)

This ALJ has reviewed the evidence of record. It does not establish that the Appellant

submitted a timely request for a medical exception or that he is currently receiving frequent and active treatment for his serious medical condition with a doctor who does not participate with a MHP as defined in the Medicaid Provider Manual policy. To the contrary, the evidence documents that Dr. Lerner is available to the Appellant through at least one MHP available to the Appellant, and the Appellant has enrolled in this MHP. The evidence further indicates that [redacted] only sees the Appellant every three months for standard treatment of chronic conditions. Accordingly, the evidence does not establish that the Appellant meets the criteria necessary to be granted a managed care exception at this time.

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.

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

cc:

Date Mailed: 7/15/2011

*** **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 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.