

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:

██████████,

Appellant

_____ /

Docket No. 2011-33403 SAS

Case No. ██████████

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 on ██████████. The Appellant appeared without representation. She had no witnesses. ██████████ represented the Department. Her witnesses were ██████████

ISSUE

Did the Department properly terminate the Appellant's Outpatient Methadone Treatment (OMT) program?

FINDINGS OF FACT

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

1. The Appellant is a ██████-year-old female Medicaid beneficiary. (Appellant's Exhibit #1)
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 Agency provides Outpatient Methadone Treatment (OMT) to its consumers.
4. The Appellant has been participating in the OMT program at the ██████████ substance abuse treatment center since ██████████. (See Testimony of ██████████)

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5. The Appellant was notified of the Department's intention to invoke administrative withdrawal from methadone, medication reviews and outpatient therapy beginning [REDACTED] and running through [REDACTED], owing to serial failure of drug testing and repeated breach of behavioral contracts. (See Testimony of [REDACTED] and Department's Exhibits F, N, M and Q)
6. The Appellant was terminated from continued participation in OMT by advance notice of action on [REDACTED], upon receipt of multiple toxicology reports showing non-compliance, continued positive toxicology reports and violation of her behavioral contracts. (Department's Exhibits T and U)
7. Having routinely tested positive for marijuana since program enrollment, the Appellant in the final months of treatment began to test positive for previously undisclosed drugs without prescription: cocaine and marijuana. (Department's Exhibit F)
8. On [REDACTED], the Agency sent the Appellant advance action notice advising her that OMT would be terminated effective [REDACTED], because she failed to meet her contract obligations – which included the obligation to not test positive for illicit drugs. Her further appeal rights were contained therein. (Department's Exhibit U)
9. Appellant filed a Request for Administrative Hearing with the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED]. (Appellant's Exhibit #1)

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 –

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

The MDCH/CMHSP Managed Specialty Supports and Services Contract, Sections 2.0 and 3.1 and Attachment 3.1.1, Section III(a) Access Standards-10/1/08, page 4, (i) directs a CMH to the Department's Medicaid Provider Manual (MPM) for determining coverage eligibility for Medicaid mental health and substance abuse beneficiaries.

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. OPAT/CSAT-approved pharmacological supports encompass covered services for methadone and supports including: nursing services, physical examinations, monthly physician encounters, laboratory testing and TB skin tests as physician ordered. See MPM, Mental Health/Substance Abuse, §§12.1 – 12.2, April 1, 2011, pp. 62-65.

The evidence in this case shows that Appellant has been in methadone treatment for twelve (12) months. The Department contends that Appellant's OMT was appropriately terminated because the Appellant demonstrated continued [medical] clinical non-compliance, repeated violation of three (3) behavioral contracts and mixing of illicit drugs that presented a serious risk of death or injury to the Appellant.

The Department witness testified that in part, its termination decision relied on the MDCH Office of Drug Control Policy-Treatment Policy-05 the policy allows for discharge/termination of a client for clinical noncompliance, as follows:

2. Clinical Noncompliance – A client's failure to comply with the individualized treatment plan, despite attempts to address such noncompliance, may result in administrative discharge for clinical noncompliance.

Justification for a clinical noncompliance discharge must be documented in the case file. Reasons for such discharge may include but are not limited to the following:

- Treatment goals have not been met within two (2) years of commencement of treatment...
- Repeated or continued use of one or more other drugs and/or alcohol that is prohibited by the beneficiary's treatment plan.

Department's Exhibit Z

This policy is in accord with the Medicaid Provider Manual that describes criteria for service denial and terminations when the beneficiary is non-compliant:

ADMISSION CRITERIA

Outpatient services should be authorized based on the number of hours and/or types of services that are medically necessary. Reauthorization or continued treatment should take place when it has been demonstrated that the beneficiary is benefiting from treatment but additional covered services are needed for the beneficiary to be able to sustain recovery independently.

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, *Supra*, p. 64

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The Department's witnesses described how the Appellant had been receiving her methadone treatment for twelve (12) months. It was discovered with urinalysis that the Appellant routinely tested positive for marijuana [with six (6) exceptions] and within the last month of [OMT] treatment began to test positive for new drugs, including cocaine, nonprescription benzodiazepines and oxycontin. See Department's Exhibit A, sub F.

The Appellant testified that she "...had eight (8) cleans and only stopped going to group because her counselor told her not to go." Department witness [REDACTED] said that the Appellant would have been instructed to "avoid group" - only if she was being disruptive.

The Appellant did not dispute that she had entered into and breached several behavior contracts.

The Appellant failed to show the proposed termination from the OMT program for non-compliance was improper. She did not present any evidence of Department error. The Appellant did not prove, by a preponderance of evidence, that she complied with the requirements of her outpatient methadone treatment program. See Department's Exhibit A-AA.

The overwhelming evidence shows that the Appellant did repeatedly test positive for illicit drugs, most often marijuana, and that near the end of her first year of treatment began utilizing previously undiscovered illicit prescription drugs, cocaine and oxycontin.

The Respondent provided sufficient evidence that its decision to terminate the Appellant from OMT 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 from OMT.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 6/30/2011

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***** 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.