

**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

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Docket No. 2011-43500 MCE

Case No. ██████████

**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 ██████████. ██████████, the Appellant, appeared on his own behalf. ██████████, mother, appeared as a witness for the Appellant. ██████████, Medical Exception and Special Disenrollment Program Specialist, represented 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 8)
2. The Appellant resides in ██████████. He is a member of the population required to enroll in a Medicaid Health Plan (MHP).
3. The Appellant has been enrolled in ██████████ since ██████████. (Medical Exception and Special Disenrollment Program Specialist Testimony)
4. On ██████████, the Michigan Department of Community Health

Enrollment Services Section received managed care exception requests from the Appellant's medical providers, ██████████  
██████████ (Exhibit 1, pages 8-15)

5. On ██████████, the Appellant's request for a managed care exception was denied. The denial notice indicated: a serious medical condition alone does not allow for a medical exception, ██████████ and ██████████ are participating providers in at least one MHP available to the Appellant; and the information sent in does not show the frequent and active treatment needed to allow for a medical exception. (Exhibit 1, pages 16-17)
6. On ██████████, the Appellant's Request for Hearing was received. (Exhibit 1, page 7)

### **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, April 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, April 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 requests for a medical exception indicate that he suffers from mental retardation, cerebral palsy, spastic quadriplegia, short bowel syndrome, and severe anemia with Crohn's disease with a history of preanastomosis ulcers. The Appellant is

being followed by [REDACTED] specialists for multiple special needs. (Exhibit 1, pages 8-9) [REDACTED] did not indicate how frequently she sees the Appellant and marked that she does work with [REDACTED]. (Exhibit 1, page 8) [REDACTED] indicated she sees the Appellant once per year but did not indicate if she participates with any of the MHPs. (Exhibit 1, page 9) The attached medical documentation was consistent with the information provided on the medical exception request forms. (Exhibit 1, pages 8-15)

The Appellant has been enrolled in [REDACTED] since [REDACTED]. (Exhibit 1, page 2) In reviewing the Appellant's medical exception request, the Medical Exception and Special Disenrollment Program Specialist acknowledged that the Appellant has a serious medical condition, but explained that this alone does not allow for a medical exception. (Medical Exception and Special Disenrollment Program Specialist Testimony) The Department verified that [REDACTED] is a participating provider in several MHPs available to the Appellant, including [REDACTED]. (Exhibit 1, page 19) The Department also verified that [REDACTED] is a participating provider, as a specialist with a referral from the primary care doctor, in several MHPs available to the Appellant. (Exhibit 1, page 20) The Medical Exception and Special Disenrollment Program Specialist testified that the [REDACTED] Specialists accept referrals from all of the MHPs and suggested that the Appellant contact the MHP he is enrolled in and request a nurse case manager to assist with arranging for his specialty care needs. Additionally, the Department found that the documentation submitted did not show a frequency of visits that would be considered active treatment for the Appellant's serious medical condition as defined in the Medicaid Provider Manual Policy. Therefore, the Department determined that the Appellant did not meet the criteria for a medical exception to mandatory enrollment. (Medical Exception and Special Disenrollment Program Specialist Testimony)

The Appellant disagrees with the Department's determination, and testified that he has a Baclofen pump. (Appellant Testimony) The Appellant and his mother are concerned with being able to get the pump filled at [REDACTED], noting that they are the only provider that does this. (Appellant and Mother Testimony) The Appellant's mother testified that the Appellant has a very long treatment history with the [REDACTED], [REDACTED], and [REDACTED] with his primary care physician. (Mother Testimony)

This ALJ has reviewed the evidence of record. It does not establish that the Appellant 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 [REDACTED] and [REDACTED] are available to the Appellant through at least one MHP available to the Appellant. Additionally, the documentation from these doctors did not show a frequency of visits that can be considered active treatment for the Appellant's serious medical condition as defined in the Medicaid Provider Manual Policy. Accordingly, the evidence does not establish that the Appellant meets the criteria necessary to be granted a managed care exception at this time.

[REDACTED]  
Docket No. 2011-43500 MCE  
Decision and Order

**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.

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

cc: [REDACTED]

Date Mailed: 10/7/2011

**\*\*\* 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.