

**STATE OF MICHIGAN**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**  
**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. 2011-4903 MCE

██████████  
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.*, 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's mother, represented the minor.

██████████ Appeals Review Officer, represented the Department. ██████████ Enrollment Services Specialist, 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 ██████████ Medicaid beneficiary.
2. The Appellant is a member of the population required to enroll in a Medicaid Health Plan (MHP). He enrolled in ██████████
3. On ██████████, the Department received the Appellant's Medical Exception requests.
4. The request was reviewed by the Department's Chief Medical Consultant, who denied the request.
5. The exception request from ██████████ office states the Appellant is diagnosed with ADHD and Fetal Alcohol Syndrome. It further indicates he is treating every 4 months.

6. The Appellant's request for a managed care exception was denied because the medical documentation did not substantiate that the Appellant is engaged in frequent and active treatment of a serious medical condition.
7. On [REDACTED], the Appellant was sent notification of the denial.
8. On [REDACTED], the State Office of Administrative Hearings and Rules for the Department of Community Health received the Appellant's Request for Administrative Hearing.

### **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 Centers for Medicare & Medicaid Services 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 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, 2010, page 30, states 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 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.

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, January 1, 2010, page 30, states in relevant part:

### **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 request for medical exception evidences that the Appellant has diagnosis of Fetal Alcohol Syndrome and ADHD. He treats with the specialist for his conditions once every four months. This frequency of treatment does not satisfy the criteria set forth above for frequent and active treatment.

The Appellant sought to question the Department’s witness about the knowledge of the Department’s medical consultant, which was objected to by the Department’s ARO. The objection was sustained as the witness is not qualified to speak to the knowledge of the Department’s Medical Consultant. The Appellant then sought to question the Department witness directly about her knowledge concerning Fetal Alcohol Syndrome and ADHD. This line of questioning was found irrelevant by this ALJ as the basis for the Department’s action is lack of frequent and active treatment, not whether the conditions qualify as serious medical conditions under policy. While the Department witness did address whether mental disorders are considered serious medical conditions for purposes of this policy at hearing, the basis for the denial, as evidenced in the notice sent to the Appellant, is lack of frequent and active treatment. Because the basis for denial and the Notice sent informing the Appellant of the same is lack of frequent and active treatment, it is unnecessary to determine whether the diagnosis qualify under the controlling criteria.

The Appellant asserted her son requires the medication and the care rendered by the particular doctor who sought the medical exception on his behalf. This issue is not material to the disposition of the case as there is no Department action to discontinue or deny treatment of any of the Appellant’s medical conditions, nor deny him medication. The Appellant’s mother can access the medical coverage her son is eligible for under the Medicaid policy with assistance, if necessary, by using the information telephone number provided on the back of the card. The Appellant’s mother stated at hearing the hearing was “a joke” and discontinued her participation therein.

This ALJ considered the evidence of record. It does not establish the Appellant satisfies the criteria to be granted a Medical Exception. He is not obtaining frequent and active treatment for

[REDACTED]  
Docket No. 2011-4903 MCE  
Decision and Order

his medical conditions. For this reason 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, finds 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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Jennifer Isiogu  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 12/20/2010

**\*\*\* NOTICE \*\*\***

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.