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:

[redacted]

Docket No. 2011-6213 MCE
Case No. 9171497

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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held [redacted].

The Appellant was represented by her [redacted].

[redacted], represented the Department. [redacted], appeared as a witness for the Department.

ISSUE

Does the Appellant meet the requirements for a managed-care exception?

FINDINGS OF FACT

The ALJ, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary.

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

3. On [redacted], [redacted], and [redacted], the Michigan Department of Community Health (MDCH) Enrollment Services Section received three managed-care exception requests from the Appellant's treating physicians, [redacted], [redacted], and [redacted].

4. On [redacted], and again on [redacted], the Appellant's

requests for a managed-care exception were denied. The denial notices indicated the following reasons for denial: (1) the Appellant's physicians are participating providers in at least one of the MHPs available to the Appellant; (2) the documentation does not support the frequent and active treatment required for an exception and (3) Medical exceptions are not considered for mental health care needs because these are addressed by the Community Mental Health Services Program in your county.

5. On [redacted], the State Office of Administrative Hearings and Rules for the Department of Community Health received the Appellant's signed Request for Administrative Hearing. This request is treated as an appeal for both of the denial Notices sent the Appellant and are consolidated into a single appeal of the same issue.

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.

The MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, January 1, 2010, pages 30-31, states in relevant part:

> 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.

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 medical exception from the neurologist [redacted] indicates the treatment plan is clinical observation. She is not prescribed any medications by this doctor nor are any anticipated. The tests evidenced indicate she had a normal MRI of her brain and normal 24 hour EEG as well. There is no indication she is being treated for an illness that satisfies the criteria for a serious medical condition as defined in Medicaid policy. The Department witness explained that chronic, ongoing conditions that are relatively stable and respond to standard medical treatment protocol do not meet the medical-exception criteria. The Department witness further stated the documentation provided by [redacted] does not satisfy the Department's criteria.

The Department witness testified the Medical Exception request submitted by [redacted] could not be considered because this doctor is a psychiatrist treating the Appellant for mental illness. Serious mental illness is not a basis for considering a medical exception because whether you have managed care Medicaid or what is known as "straight" Medicaid, serious mental illness is treated and managed by the Community Mental Health system.

The Department witness further testified the medical exception request sent in by [redacted] did not identify active treatment. Review of this document demonstrates this doctor is not prescribing any medications to the Appellant and has prescribed diet treatment only for one condition and an oral supplement for a vitamin D deficiency.

The Appellant's [redacted] stated that she has 3 more medical exception requests to submit, one from a cardiologist, one from her internist and one from a pulmonary specialist. She said she has not had those appointments yet so she has not turned them in. She said her [redacted] used to have straight Medicaid and private insurance. She said she will have to pick up private insurance again if she is forced into the HMO.

Review of the evidence indicates the medical exception requests do not evidence the frequent and active treatment required for a medical exception. The medical exception criteria requires treatment to be monthly or more frequent, and this requirement is consistent with the purpose and intent of the policy. Here, the documentation provided to the Department does not support the frequent and active treatment required to qualify for a medical exception. The evidence supports the Department's determination that the Appellant did not meet any of the criteria for a medical exception. The Department must rely on what was provided on the forms submitted and make their determination within the bounds of policy. The burden of proof rests with the Appellant to establish that the Department's decision is incorrect. The evidence does not establish that the Appellant meets any of the criteria necessary to be granted a managed-care exception.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied that Appellant's requests for a managed-care exception.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

[redacted]
Docket No. 2011-6213 MCE
Decision and Order

cc: [redacted]

Date Mailed: 2/1/2011

***** 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.