STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted]

Docket No. 2011-8003 MCE
Case No. 24812860

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

After due notice, a hearing was held on [redacted]. The Appellant, [redacted], appeared on her own behalf. [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 Administrative Law Judge, 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). She is currently enrolled in the [redacted]. (Exhibit 1, page 3; Testimony of [redacted])

3. On [redacted], the Michigan Department of Community Health (MDCH) Enrollment Services Section received a managed-care exception request from the Appellant's treating physician, [redacted]. (Exhibit 1, page 8)

4. On [redacted], the Appellant's request for a managed-care exception was denied. The denial notice indicated the following reasons for the denial:

(1) the Appellant's physician is a participating provider in at least one of the MHPs available to the Appellant and (2) the documentation does not support the frequent and active treatment required for an exception. (Exhibit 1, pages 10-11)

5. The Appellant did not receive the first denial letter, so a second one was sent to her on [redacted]. (Exhibit 1, page 7)

6. On [redacted], the State Office of Administrative Hearings and Rules for the Department of Community Health received the Appellant's signed request for an administrative hearing. (Exhibit 1, page 6)

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 187 of 2010 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, October 1, 2010, page 31-32, 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.

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 Department does not dispute the seriousness of the Appellant's condition. However, the medical-exception request does not evidence the frequent and active treatment required for a medical exception. The request indicates that the Appellant is treating with her physician two to three times per year. The medical-exception criterion 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.

In addition, in reviewing the Appellant's medical-exception request, the Department found that the Appellant's physician participates in, or accepts referrals from, at least one MHP available to the Appellant. (Exhibit 1, pages 12-13) Accordingly, the criteria for a medical exception have not been met as the physician that submitted the medical-exception request is available to the Appellant through a MHP.

The Appellant testified that she has no problem with being enrolled in the [redacted]. She states that she is concerned about getting her medications and continuing treatment with her cardiologist. The Appellant was advised that if she had been denied any medications, she would need to file a written hearing request for that denial.

The burden of proof rests with the Appellant to establish that the Department's decision is incorrect. This Administrative Law Judge reviewed the evidence of record. And the evidence does not establish that the Appellant meets 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.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 3/7/2011

***** 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.