



**Docket No. 2011-16953 SAS**  
**Decision and Order**

5. The Appellant was notified of the Department's treatment policy that prohibits use of other drugs that are not part of the client's treatment plan. (Department's Exhibit A, pp. 8-11)
6. The Appellant was terminated from continued participation in OMT by adequate action notice upon receipt of multiple toxicology reports showing positive testing results for illicit drugs; Opiates and Cocaine. (Department's Exhibit A, pp. 18, 26-33)
7. The Appellant submitted positive toxicology results for Opiates and Cocaine for the time period represented in the Department's hearing summary of [REDACTED] through [REDACTED]. (Department's Exhibit A, pp. 26-33)
8. The Appellant's local appeal was heard on [REDACTED] and denied on [REDACTED] for lack of supporting documentation concerning medical prescription evidence. (Department's Exhibit A, pp. 19-24)
9. The Appellant was offered sub acute detoxification with residential services or outpatient (without Methadone) follow-up treatment, which she declined. (Department's Exhibit A, p. 25)
10. Appellant filed a Request for Administrative Hearing with the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED].

**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 –

- (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.

Pursuant to the Section 1915(b) waiver, Medicaid state plan services, including Substance Abuse Rehabilitative Services, may be provided by the PIHP to beneficiaries who meet applicable coverage or eligibility criteria. Specific service and support definitions are set forth in the relevant mental health/substance abuse sections of the Medicaid Provider Manual (MPM).

See Contract, Part II, §2.1.1, pp. 26, 27.

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. MPM, Mental Health/Substance Abuse, §§12.1 – 12.2, April 1, 2011, pp. 62-65.<sup>1</sup>

The evidence in this case indicates Appellant has been in methadone treatment for (14) fourteen months. The Department contends that Appellant's OMT was appropriately terminated because the Appellant demonstrated continued medical clinical non-compliance and that the mixing of illicit drugs 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:

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2. Clinical Noncompliance – A client's failure to comply with the individualized treatment plan, despite attempts

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<sup>1</sup> This edition of the MPM is identical to the version in place at time of appeal.

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.

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- Failure to manage medical concerns/conditions, including adherence to physician treatment services and prescription medications, that may interfere the effectiveness of methadone treatment and/or the continued use of methadone, and may present a physical risk to the client.

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Department's Exhibit A, pp. 10-11

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;

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- 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 witness ██████████ introduced evidence that the Appellant had been receiving its methadone treatment for (14) fourteen months. It was discovered that the Appellant was still testing positive for Opiates and Cocaine. Furthermore, the Appellant admitted using Vicodin on doctor prescription – but never produced any doctor's order as evidence.

The Department's witness testified that when the Appellant failed to produce written documentation for proof of prescribed medication - termination processes were initiated as it became clear that the Appellant was medically non-compliant and still actively mixing illicit drugs.

The Appellant testified in an inconsistent manner. She said, "...it was a medicine that made it [the drug test] come up negative [positive]."

The Appellant failed to show the proposed termination from the OMT program for non-compliance was improper because 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, pages 1-37.

The overwhelming evidence shows that the Appellant did repeatedly test positive for illicit drugs and then failed to produce exclusionary letters from prescribing and treating physicians in contravention to orders from ██████████ medical director for the clinic.

The Respondent provided sufficient evidence that its decision to terminate the Appellant from OMT and then refer her to sub acute detoxification with residential or outpatient (without Methadone) follow-up treatment 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.

  
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**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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

cc: 

Date Mailed: 4/27/2011

**\*\*\* 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 & 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.