

**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. 2011–30639 SAS
Case No. 26658545**

██████████,

Appellant

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on Wednesday ██████████. ██████████, Appellant, appeared on her own behalf.

██████████, Substance Abuse Commission, represented the Department's agent. ██████████, Substance Abuse Counselor; and ██████████, Head Counselor; The ██████████ Clinic; appeared as witnesses for the Department/Mid-South.

ISSUE

Did the Department properly terminate Appellant's request for Opiate Methadone Treatment (OMT)?

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. Mid-South Substance Abuse Commission (Mid-South) is the authorizing agency for substance abuse services in ██████████ and ██████████ counties.
3. Mid-South contracts with The ██████████ Clinic to provide substance abuse services to its Medicaid beneficiaries.
4. The Appellant is a ██████████ old female with a history of substance abuse, including use of cocaine. (Mid-South Attachment 9).

5. The Appellant has been receiving OMT services from [REDACTED] Clinic since at least [REDACTED] (Mid-South Attachment 9).
6. The Appellant continued to use illegal substances, testing positive for cocaine during drug screens, from [REDACTED] through [REDACTED]. ((Mid-South Attachments 5 and 9; Testimony of Appellant).
7. In [REDACTED] the Appellant signed a contract agreeing that her drug screens would remain free from illegal substances for 90 days. (Mid-South Attachment 5).
8. On [REDACTED], the Appellant was sent a notice that her OMT would be terminated and administrative detoxification would begin on [REDACTED] to be completed by [REDACTED]. (Mid-South Attachment 6).
9. On [REDACTED], the Michigan Administrative Hearing System received the Appellant's request for an Administrative hearing. (Mid-South Attachment 7).
10. The Appellant admits she continues to use cocaine along with her OMT. (Testimony of Appellant).

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 (Contract) 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. *Contract FY 2009, Part II, Section 2.1.1, p 27.* Specific service and support definitions included under and associated with state plan responsibilities are set forth in the Mental Health/Substance Abuse Chapter of the Medicaid Provider Manual (MPM). *Contract FY 2009, Part II, Section 2.1.1, p 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. *MPM, Mental Health/Substance Abuse Chapter, §§ 12.2, January 1, 2011, p 65.*

OPAT/CSAT-approved pharmacological supports encompass covered services for methadone and supports, and associated laboratory services. *MPM, Mental Health/Substance Abuse Chapter, §§ 12, January 1, 2011, OPAT/CSAT subsection.* Opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy.

The Appellant admits she continues to use cocaine along with her OMT. (Testimony of Appellant). Respondent contends that Appellant's OMT was appropriately terminated because the Appellant demonstrated continued clinical non-compliance.

The Respondent [REDACTED] and [REDACTED] indicated that its termination decision was based on law and policy: the Code of Federal Regulations, the Medicaid Provider Manual, and the MDCH "Enrollment Criteria for Methadone Maintenance and Detoxification Program". (Mid-South Attachments 1-3). The Respondent demonstrated through testimony and document evidence that Mid-South is allowed to limit its services to those that are medically necessary, that medical necessity can be terminated if methadone is deemed ineffective and there is a more effective treatment to offer, and that OPAT/CSAT methadone treatment can be terminated where a person continues to use illicit substances despite being offered treatment.

The Respondent's witness [REDACTED] testified that in part, its termination decision relied on the MDCH "Enrollment Criteria for Methadone Maintenance and Detoxification Program". The Criteria allows for discharge/termination of a client for clinical noncompliance, as follows:

2. Clinical Noncompliance – A client's failure to comply with the individualized treatment plan, despite attempts to address such noncompliance, may result in administrative discharge... Reasons for such discharge 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. (*Enrollment Criteria for Methadone Maintenance and Detoxification Program, 01/01/2008 revision, p 6*)

Witness [REDACTED] testified that a significant factor in the decision to terminate OMT is Appellant's continued use of cocaine. (Mid-South attachments 5, 9). Witness [REDACTED] introduced evidence that Appellant repeatedly tested positive for cocaine from [REDACTED] through [REDACTED], despite signing a probationary 90-day contract to remain cocaine-free while using OMT. Appellant's continued use of cocaine over the previous year demonstrated to Mid-South that methadone treatment was not appropriate for Appellant's opiate dependence. Mid-South demonstrated that termination from OMT and administrative detoxification was the appropriate, medically necessary treatment.

The Appellant testified that she admitted to consistently using cocaine. Appellant stated that she knew she was doing wrong but wanted another chance. Appellant testified that she turned to the wrong people to talk to and wound up using drugs again.

The Respondent countered the Appellant's testimony by noting that on [REDACTED], [REDACTED] Appellant was placed on a "concerned" watch list. The Respondent explained that its staff personally discussed and developed a contract to help her overcome her cocaine use. The Respondent explained that in the 90-day contract, signed by Appellant, she agreed she could be terminated from methadone if she did not stop using cocaine.

The Appellant bears the burden of proving, by a preponderance of evidence, that she met all the criteria for OMT. The Appellant did not meet her burden.

The Respondent provided sufficient evidence that its decision to terminate OMT, was proper and in accordance with the federal regulations, and Department policy. This means that Mid-South properly terminated Appellant outpatient methadone treatment.


Case Name: [REDACTED]
Docket No. 2011-30639 SAS
Hearing Decision & Order

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Appellant's outpatient methadone treatment program.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is AFFIRMED.

 [REDACTED]
[REDACTED]
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 9/2/2011

***** 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 & 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 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.