**STATE OF MICHIGAN**
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**
**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. 2012-25275 MCE

[redacted] [redacted] [redacted]

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 on [redacted]. The Appellant appeared without representation. She had no witnesses. [redacted], Medicaid specialist, represented the Department. She had no witnesses.

## ISSUE

Did the Department properly deny Appellant's request for exception from Managed Care Program enrollment?

## 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 disabled, [redacted]-year-old Medicaid beneficiary. (Appellant's Exhibit #1)

2. The Appellant resides in [redacted]. (Appellant's Exhibit #1)

3. The Appellant is in that population required to enroll in a Medicaid Health Plan (MHP). (Department's Exhibit A, p. 2)

4. The Appellant is currently enrolled as a Fee-For-Service (FFS) Medicaid recipient and remains so enrolled during the pendency of this appeal. (Department's Exhibit A, p. 2)

5. On [redacted], the Michigan Department of Community Health Enrollment Services Section received a managed care exception request from the Appellant's physican, [redacted], M.D. – a participating provider. (Department's Exhibit A, pp. 2, 8)

6. On [redacted] a second exception request was received from [redacted]. – the requests for exception considered as one and denied on [redacted] Department's Exhibit A, pp. 2, 14)

7. The only documentation received and reviewed was from the Appellant's PCP [redacted] and participating neurologist [redacted] b. [redacted] is listed as a contracted provider with [redacted]. [redacted] works with specialists out of [redacted] and accepts referrals from Priority Health Medicaid Health Plan. (Department's Exhibit A, p. 2)

8. The information from [redacted] indicated visits at [redacted] month intervals which does not meet the monthly or more frequency for active treatment medical exception. (Department's Exhibit A, p. 2)

9. On [redacted] the Appellant was advised of the denial with the reasons referenced above and a further explanation of her appeal rights. (Department's Exhibit A, pp. 2, 10 and 11)

10. The instant request for hearing was received by the Michigan Administrative Hearings System (MAHS) from the Appellant on [redacted]. ((Appellant's Exhibit #1)

## 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 Medicaid Provider Manual (MPM), Beneficiary Eligibility[1] §9.3, April 1, 2012, page 37, states:

> 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 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.

The MPM also states at pp. 37-38:

> **Serious Medical Condition**
>
> Grave, complex, or life threatening

[1] This version of the MPM is identical to the edition in place at the time of negative action and appeal.

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 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 seeks medical exception owing to her diagnoses of; "brain tumor[2], seizures, chronic pain, thyroid, RSD, pinched nerves, eye problems and migraines" and her comfort level with her physican.

She argued that because she must travel to different geographic locations - fee for service makes the most sense for ease of medically necessary treatment. She said her endocrinologist at [redacted] refused to sign up – but advised that they would take straight [FFS] Medicaid. She added that she needs Medicaid at this point in her life – and doesn't know what she'll do without it.

The Department witness, [redacted], testified that the Department would review another exception request if the Appellant brought such a request and that the Appellant would receive all of the care and treatment from her health plan that she would receive from Fee for Service Medicaid. She added that the Appellant's request was denied because the physicians sought[3] by the Appellant were participating members with [redacted] Plan and because the frequency of treatment was not established at a monthly or greater – the required criterion for a medical exception. [redacted] added that to be eligible for a medical exception the Appellant must demonstrate satisfaction of all three (3) statutory criteria: seriousness, active treatment and a non-participating physician. *Supra.*

On review, I gave the testimony of Department witness [redacted] controlling weight. She clearly explained that the Appellant failed to qualify for medical exception and that appropriate treatment could be received within a MHP from the very physicians she desired to control her medical treatment.

The Appellant failed to preponderate her burden of proof.

## DECISION AND ORDER

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

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[2] *See* Appellant's Exhibit #1

[3] Only Drs. [redacted] submitted MSA-1626. *See* Department's Ex. A, pp. 8, 9

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 4-20-12

***** 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 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.