

**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
Case**

**No. 2012-47886 SAS
No. [REDACTED]**

[REDACTED]

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 [REDACTED]. Appellant appeared and testified on her own behalf. [REDACTED] Fair Hearing Officer, appeared on behalf of the [REDACTED]. [REDACTED] Policy Improvement Analyst, was also present during the hearing but did not testify.

ISSUE

Did the Respondent properly terminate Appellant's outpatient [REDACTED] treatment?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Appellant is a [REDACTED] Medicaid beneficiary, born [REDACTED] (Exhibit 1, page 4).
2. [REDACTED] is an authorizing agency for substance abuse services provided under programs administered by the [REDACTED].
3. [REDACTED] contracts with the [REDACTED] (" [REDACTED] ") to provide outpatient [REDACTED] treatment [REDACTED] to [REDACTED] enrollees.

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4. Appellant has been receiving [REDACTED] through [REDACTED] since [REDACTED] [REDACTED] (Exhibit 1, page 3).
5. Appellant's participation in [REDACTED] requires prohibition from the use of [REDACTED] or [REDACTED] not included in her treatment plan. (Exhibit 1, page 12).
6. Appellant has not provided a prescription for the [REDACTED] test results and has been using [REDACTED] while in the program. (Testimony of Appellant).
7. On [REDACTED] a Probationary Notice was issued which placed Appellant on probation due to a [REDACTED] test for illicit substances on [REDACTED] [REDACTED] (Exhibit 1, page 13).
8. Appellant the tested [REDACTED] for [REDACTED] on [REDACTED] [REDACTED], [REDACTED], [REDACTED] and [REDACTED] (Exhibit 1, pages 4-11).
9. On [REDACTED] the Appellant was given an Advance Notice of Action, stating she would be terminated from the [REDACTED] program due to [REDACTED] [REDACTED]. The notice also provided the right to request a fair hearing. (Exhibit 1, page 1).
10. Appellant filed a Request for Administrative Hearing with the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED] (Exhibit 2)

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

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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, §§ 12.1, April 1, 2012, page 64.*

OPAT/CSAT-approved pharmacological supports encompass covered services for ██████████ and supports and associated laboratory services. *MPM, Mental Health/Substance Abuse Chapter, §§ 12, April 1, 2012, OPAT/CSAT subsection.* Opiate-dependent patients may be provided therapy using ██████████ or as an adjunct to other therapy.

The evidence in this case indicates Appellant has a long history of substance abuse. Respondent contends that Appellant's OMT was appropriately terminated because the Appellant demonstrated continued clinical non-compliance.

Respondent's representative testified that in part, its termination decision relied on Treatment and Recovery Policy #05, dated October 1, 2011, that it provided as Attachment 12 to its Hearing Summary. As stated in that policy, "individuals may be terminated from services if there is clinical and/or behavioral non-compliance" and "[t]he repeated use of illicit ██████████ and ██████████ drugs, including ██████████, would be considered non-compliance."

Appellant was enrolled in the ██████████ maintenance treatment program at ██████████. As discussed above, Appellant tested ██████████ for ██████████ on ██████████ and ██████████.

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Appellant has not provided a prescription for the drug test results. The evidence of record also establishes that the Department's agent issued a proper advance action notice of termination.

The maintenance and program, as outlined in the Department's requirements, prohibits the use of illicit drugs not otherwise prescribed by a physician. Substantial compelling evidence submitted by the Department's agent established that Appellant repeatedly tested for illicit drugs and failed to provide requested physician documentation for the illicit drugs that showed in her

Appellant did not dispute the drug screens, but rather testified that she has an problem. She also pledged to do better and requested a two month extension of her probation.

In response to the Appellant's last claim, the Department's representative testified that Appellant was still free to use other services offered at such as group sessions. Appellant testified that she had no interest in other services besides

The Department provided sufficient evidence that its decision to terminate Appellant from including therapy, was proper and in accordance with Department policy. The Appellant did not prove, by a preponderance of evidence that he complied with his outpatient treatment program. This means that the properly terminated Appellant's outpatient treatment.

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 treatment program.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

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Date Mailed: _____

***** 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.