

**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. 2012-60525 SAS
No. [REDACTED]**

[REDACTED]

Appellant

_____ /

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. Appellant appeared and testified on her own behalf. [REDACTED] appeared on behalf of the Saginaw County Health Department. [REDACTED] counsel or at Victory Clinical Services, also testified as a witness.

ISSUE

Did the Respondent properly terminate Appellant's substance abuse services?

FINDINGS OF FACT

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

1. Respondent is an authorizing agency for substance abuse services provided under programs administered by [REDACTED] the Department of Community Health/Community Mental Health.
2. Respondent contracts with the Victory Clinical Services ("Victory") to provide services, including outpatient [REDACTED] treatment (OMT), to enrollees.
3. Appellant started receiving services, including OMT, at Victory on [REDACTED] [REDACTED] (Exhibit A, page 1).

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4. Appellant's continued participation in services at Victory required compliance with the Clinic's rules and prohibitions. (Exhibit M, page 6).
5. Between ██████████ and ██████████ Appellant repeatedly tested positive for ██████████ and ██████████ (Exhibit B, page 1).
6. Due to her repeated positive test ██████████s, Appellant was placed on an "administrative contract" as of ██████████ and told that her return to full status at the Clinic would be decided at a review in the thirty days. (Exhibit E, page 1).
7. Appellant continued to test positive for ██████████ and ██████████ following her placement on administrative contract. She also tested positive for ██████████ in ██████████ and ██████████ (Exhibit B, page 1).
8. At the review of Appellant's case at the expiration of her contract, it was noted that she had continued to have positive drug tests and that she was in violation of her contract. The decision was then made to put her on an administrative detoxification. (Exhibit H, page 1).
9. On ██████████ Respondent sent Appellant an Advance Action Notice indicating that her services would be terminated on ██████████ due to her positive drug tests during the behavioral contract. (Exhibit J, page 1).
10. Throughout ██████████ Appellant repeatedly missed or cancelled her counseling appointments. (Exhibit C, page 2; Exhibit D, page 2; Exhibit G, page 1; Testimony of ██████████).
11. On ██████████ Appellant was sent another Advance Action Notice. This second notice advised Appellant of a thirty day administrative taper due to her failure to follow the attendance policy in ██████████. The notice also stated that the attendance policy required a minimum of two sessions per month. (Exhibit K, page 1).
12. Appellant filed a Request for Administrative Hearing with the Michigan Administrative Hearing System for the Department of Community Health on ██████████

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, §§ 12.1, April 1, 2012, page 64.*

OPAT/CSAT-approved pharmacological supports encompass covered services for methadone 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 methadone or as an adjunct to other therapy.

Here, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her services due to continued clinical non-

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compliance. For the reasons discussed below, this Administrative Law Judge finds that Appellant failed to meet that burden.

Appellant does not dispute the positive drug screens for [REDACTED] and, instead, insists that she had a prescription for [REDACTED] and that her prescription accounts for the positive tests. However, Appellant did not produce any such prescription during the hearing. Moreover, [REDACTED] credibly testified that, while Appellant also told her that she had a prescription for [REDACTED], Appellant never produced a proper prescription and only had a marked up pill bottle. [REDACTED] case notes also reflect Appellant's failure to produce a prescription and that, if Appellant was prescribed [REDACTED], there should have been a coordination of care with Appellant's doctor. No such coordination of care occurred in this case and, given the lack of evidence supporting Appellant's testimony, this Administrative Law Judge finds that she has failed to meet her burden of proving that she had a proper prescription for [REDACTED] or that the positive drug tests did not justify terminating her services.

Appellant also does not dispute the positive tests for opiates and admits to taking [REDACTED]. However, Appellant also testified that she informed her doctors that she was taking [REDACTED] and that she only took it because her [REDACTED] dosage was insufficient to counteract her withdrawal symptoms. In response, [REDACTED] testified that Appellant only admitted to taking [REDACTED] at the end of her treatment and that its use was never sanctioned by [REDACTED]. [REDACTED] also testified that, if Appellant's dosage was insufficient, the proper procedure would be for Appellant to inform the nurses and have her dosage increased. Given [REDACTED] testimony and the rules of [REDACTED] this Administrative Law Judge finds Appellant's argument to be unpersuasive. The use of [REDACTED] was prohibited and Appellant's unauthorized use was sufficient grounds for termination.

Appellant does dispute the positive tests for [REDACTED] and asserts that she does not use [REDACTED]. However, the test results speak for themselves and this Administrative Law Judge does not find Appellant to be credible on this issue.

As discussed above, in addition to the positive drug tests, Appellant's services were also terminated because she missed or cancelled all of her counseling appointments in [REDACTED] and thereby violated [REDACTED] attendance policies. Appellant claims that she did no such thing, but this Administrative Law Judge does not find her to be credible. Moreover, [REDACTED] credibly testified regarding the missed appointments and her case notes document Appellant's failure to appear.

Given the above record, this Administrative Law Judge finds that the Department provided sufficient evidence that its decision to terminate Appellant's services was proper and in accordance with Department policy. Accordingly, the decision to terminate services must be affirmed.

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 substance abuse services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven Kibit

Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 10/01/2012

***** 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.