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:

[redacted]

Appellant
_____/

Docket No. 2012-68136 DISP
Case No. [redacted]

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.

After due notice, a hearing was held on [redacted]., the Appellant, appeared on his own behalf. [redacted], MDCH Special Disenrollment Program Coordinator, represented the Department.

ISSUE

Did the Department properly propose to disenroll the Appellant from Meridian Health Plan of Michigan on request of the Medicaid Health Plan ("MHP")?

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 an adult Medicaid Beneficiary, who was enrolled in Meridian Health Plan of Michigan, a MHP. (Exhibit 1, page 10).

2. The Department of Community Health contracts with the MHP to provide Medicaid services to the Appellant and other enrollees.

3. On [redacted], the Department's Medical Services Administration ("MSA"), Enrollment Services Section received a request for Special Disenrollment from the MHP regarding the Appellant. (Exhibit 1, page 9).

4. The request for disenrollment alleged that the Appellant's proposed discharge was based on violent/threatening behavior. (Exhibit 1, pages 9-14).

5. On [redacted], following MSA investigation, the Appellant was sent notice that he would be disenrolled from the MHP effective [redacted] and placed in Fee for Service Medicaid due to actions inconsistent with plan membership, alleged threatening behavior. (Exhibit 1, page 7).

6. On [redacted], the Appellant's Request for Hearing was received by the Michigan Administrative hearing System. (Exhibit 1, page 6).

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.

42 CFR § 438.56 Disenrollment: Requirements and limitations.

a. *Applicability.* The provisions of this section apply to all managed care arrangements whether enrollment is mandatory or voluntary and whether the contract is with an MCO, a PIHP, a PAHP, or a PCCM.

b. *Disenrollment requested by the MCO, PIHP, PAHP, or PCCM*. All MCO, PIHP, PAHP, and PCCM contracts must—

1. Specify the reasons for which the MCO, PIHP, PAHP, or PCCM may request disenrollment of an enrollee;

2. Provide that the MCO, PIHP, PAHP, or PCCM may not request disenrollment because of an adverse change in the enrollee's health status, or because of the enrollee's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from his or her special needs (except when his or her continued enrollment in the MCO, PIHP, PAHP, or PCCM seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees); and

3. Specify the methods by which the MCO, PIHP, PAHP, or PCCM assures the agency that it

does not request disenrollment for reasons other than those permitted under the contract.

c. *Disenrollment requested by the enrollee.* If the State chooses to limit disenrollment, its MCO, PIHP, PAHP, and PCCM contracts must provide that a recipient may request disenrollment as follows:

1. For cause, at any time.

2. Without cause, at the following times:

i. During the 90 days following the date of the recipient's initial enrollment with the MCO, PIHP, PAHP, or PCCM, or the date the State sends the recipient notice of the enrollment, whichever is later.

ii. At least once every 12 months thereafter.

iii. Upon automatic reenrollment under paragraph (g) of this section, if the temporary loss of Medicaid eligibility has caused the recipient to miss the annual disenrollment opportunity.

iv. When the State imposes the intermediate sanction specified in §438.702(a)(3)

The Department's Contract disenrollment provisions must comply with the above-cited applicable Federal regulations for Health Plan contracts created under the authority of the Medical Assistance program. Code sections [42 CFR 438.100 and 438.708] provide the mechanism(s) for enrollee protection and the potential for health plan/MCO sanction. Those sections provide;

438.100 Enrollee rights.

a. *General rule*. The State must ensure that--

1. Each MCO and PIHP has written policies regarding the enrollee rights specified in this section; and

2. Each MCO, PIHP, PAHP, and PCCM complies with any applicable Federal and State laws that pertain to enrollee rights, and ensures that its staff and affiliated providers take those rights into account when furnishing services to enrollees.

b. *Specific rights*—

1. *Basic requirement*. The State must ensure that each managed care enrollee is guaranteed the rights as specified in paragraphs (b)(2) and (b)(3) of this section.

2. An enrollee of an MCO, PIHP, PAHP, or PCCM has the following rights: The right to--

i. Receive information in accordance with Sec. 438.10.

ii. Be treated with respect and with due consideration for his or her dignity and privacy.

iii. Receive information on available treatment options and alternatives, presented in a manner appropriate to the enrollee's condition and ability to understand. (The information requirements for services that are not covered under the contract because of moral or religious objections are set forth in Sec. 438.10(f)(6)(xii)).

iv. Participate in decisions regarding his or her health care, including the right to refuse treatment.

v. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience or retaliation, as specified in other Federal regulations on the use of restraints and seclusion.

vi. If the privacy rule, as set forth in 45 CFR parts 160 and 164 subparts A and E, applies, request and receive a copy of

his or her medical records, and request that they be amended or corrected, as specified in 45 CFR Sec. 164.524 and 164.526.

3. An enrollee of an MCO, PIHP, or PAHP (consistent with the scope of the PAHP's contracted services) has the right to be furnished health care services in accordance with 42 CFR 438.206 through 438.210.

c. *Free exercise of rights.* The State must ensure that each enrollee is free to exercise his or her rights, and that the exercise of those rights does not adversely affect the way the MCO, PIHP, PAHP, or PCCM and its providers or the State agency treat the enrollee.

d. *Compliance with other Federal and State laws*. The State must ensure that each MCO, PIHP, PAHP, and PCCM complies with any other applicable Federal and State laws (such as: title VI of the Civil Rights Act of 1964 as implemented by regulations at 45 CFR part 80; the Age Discrimination Act of 1975 as implemented by regulations at 45 CFR part 91; the Rehabilitation Act of 1973; and titles II and III of the Americans with Disabilities Act; and other laws regarding privacy and confidentiality).

438.708 Termination of an MCO or PCCM contract.

A State has the authority to terminate an MCO or PCCM contract and enroll that entity's enrollees in other MCOs or PCCMs, or provide their Medicaid benefits through other options included in the State plan, if the State determines that the MCO or PCCM has failed to do either of the following:

a. Carry out the substantive terms of its contract; or

b. Meet applicable requirements in sections 1932, 1903(m), and 1905(t) of the Act.

The Michigan Department of Community Health (DCH), pursuant to the provisions of the Social Security Act Medical Assistance Program, contracts with the Health Plan of Michigan to provide State Medicaid Plan services to enrolled beneficiaries and ABW recipients.

The Department's contract provides, as follows:

> B. Disenrollment Requests Initiated by the Contractor
>
> 1. Special Disenrollments
>
> The Contractor may initiate special disenrollment requests to DCH based on enrollee actions inconsistent with Contractor membership – for example, if there is fraud, abuse of the Contractor, or other intentional misconduct; or if, the enrollee's abusive or violent behavior posses a threat to the Contractor or provider. The Contractor is responsible for members until the date of disenrollment. Special disenrollment requests are divided into three categories:
>
> a. Violent/life threatening situations involving physical acts of violence; physical or verbal threats of violence made against Contractor providers, staff or the public at Contractor locations; or stalking situations.
>
> b. Fraud/misrepresentation involving alteration or theft of prescriptions, misrepresentation of Contractor membership, or unauthorized use of CHCP benefits.
>
> c. Other actions inconsistent with plan membership. Examples include, but are not limited to, the repeated use of non-Contractor providers without referral or when in-network providers are available; discharge from multiple practices of available Contractor's network providers; inappropriate use of prescription medication or drug seeking behaviors including inappropriate use of emergency room facilities for drug-seeking purposes.
>
> A Contractor may not request special disenrollment based on physical or mental health status of the enrollee. If the enrollee's physical or mental health is a factor in the actions inconsistent with plan membership, the Contractor must document evidence of the Contractor's actions to assist the enrollee in correcting the problem, including appropriate physical and mental health referrals. (Exhibit 1, page 16)

The MDCH Special Disenrollment Program Coordinator testified that after investigation and review, she approved the MHP's Special Disenrollment request because the submitted information documented threatening behavior to a contracted provider. The police were called because the Appellant made threats to the eye doctor's office that he would get a pistol and shoot the place up, specifically including the doctor. (Exhibit 1, pages 9-14). The documentation was also reviewed by the Department's Medical Director. The Medical Director agreed with the determination to approve the requested disenrollment. (Exhibit 1, page 15).

The Appellant disagrees with the disenrollment and testified that he made a mistake and is being treated for it. The Appellant stated the [redacted] involved knew him from when he was previously in [redacted], and told the eye doctor's office the Appellant would not really shoot them. The Appellant explained that so many drops had been put in his eye that night, it was like torture. The Appellant testified he is on medications for anxiety and depression, and has been in counseling for the threatening problem. The Appellant stated that he is a minister. The Appellant also stated he can not get to a doctor with the Medicaid he has now and he wants a second chance. (Appellant Testimony).

The evidence in this case supports the Department's determination to approve the special disenrollment based on the Appellant's threatening behavior toward a contracted provider. It is uncontested that the Appellant made the threats to shoot up the eye doctor's office and the eye doctor. As noted during the telephone hearing proceedings, medical transportation is available to the Appellant through the local Department of Human Services and/or Community Mental Heath offices. While this ALJ hopes the Appellant continues with counseling and treatment, the Department has presented sufficient evidence to support the approval of the MHP's Disenrollment request.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly granted the MHP's request for Special Disenrollment.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[redacted]
Docket No. 2012-63934 DISP
Hearing Decision & Order

cc: [redacted]

Date Mailed: October 30, 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 and 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.