

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2012-3446 SAS
Case No. 17250086

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Systems Management Specialist and Fair Hearings Officer, represented the Respondent, ██████████. ██████████, Clinician, and ██████████, Program Director, also testified as witnesses for Respondent.

ISSUE

Did the Respondent properly terminate Appellant's outpatient methadone 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 ██████ year-old man who has been diagnosed with opiate dependency and has a deferred diagnosis of anxiety and depression. (Exhibit D, page 1; Testimony of ██████████).
2. ██████████ is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.
3. ██████████ contracts with ██████████ Services, now ██████████ Services, to provide outpatient methadone treatment to its enrollees. (Testimony of ██████████).
4. Appellant had been receiving outpatient methadone treatment (OMT)

- through ██████████ / ██████████ Services. (Exhibit D, pages 1-3).
5. On ██████████, Appellant was attending an unsupervised group meeting. Despite having an opportunity to use a bathroom prior to the meeting, Appellant developed a need to use a bathroom. (Testimony of Appellant).
 6. Appellant left the meeting room to use the bathroom, but was told by ██████████ ██████████ Services employees that he had to either return to the group session or leave the building. (Testimony of Appellant). ██████████ Services has a policy of not allowing its clients to move around its facilities unescorted. (Testimony of ██████████).
 7. Appellant returned to the group and advised the others that he still had to go to the bathroom. Appellant then went to a corner of the room and urinated into plastic cups, with his back turned to the group. He placed the cups into a plastic bag and returned to the group meeting. After the meeting was over, he took the plastic bag with him and disposed of its contents. (Testimony of Appellant).
 8. Based on those actions, ██████████ / ██████████ Services decided to terminate Appellant's participation in the methadone treatment program. Appellant was offered a spot in the ██████████ Clinic methadone program as an alternative, but he declined. (Testimony of ██████████).
 9. On ██████████, ██████████ sent Appellant a notice that it was terminating his services. (Exhibit C, page 1).
 10. According to that notice, Appellant's services were terminated because: "Breach of program expectations. Inappropriate [and] illegal behavior on site." (Exhibit C, page 1).
 11. The effective date of the termination from the program was identified as ██████████. (Exhibit C, page 1).
 12. On ██████████, the Department received Appellant's request for an administrative hearing. In that request, Appellant argues that the decision to terminate his services was incorrect because he had no choice. (Exhibit A, page 1).

CONCLUSIONS OF LAW

The Medicaid program was established pursuant to Title XIX of the Social Security Act (SSA) and is implemented by 42 U.S.C. § 1396 *et seq.*, and Title 42 of the Code of Federal Regulations (42 C.F.R. § 430 *et seq.*). The program is administered in accordance with state statute, the Social Welfare Act (M.C.L. § 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, page 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, page 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, page 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.

Here, Appellant was terminated from the outpatient methadone treatment on the basis that he violated the Medical Provider Manual (MPM) ██████████ Services' program

expectations, and the MDCH's Treatment and Recovery Policy. For the reasons discussed below, this Administrative Law Judge finds that the termination should be affirmed.

The MPM provides, in part, that:

SECTION 12 – SUBSTANCE ABUSE SERVICES

12.1 COVERED SERVICES - OUTPATIENT CARE

Medicaid-covered services and supports must be provided, based on medical necessity, to eligible beneficiaries who reside in the specified region and request services. Outpatient treatment is a non-residential treatment service or an office practice with clinicians educated/trained in providing professionally directed alcohol and other drug (AOD) treatment. The treatment occurs in regularly scheduled sessions, usually totaling fewer than nine contact hours per week but, when medically necessary, can total over 20 hours in a week. Individual, family or group treatment services may be provided individually or in combination.

Treatment must be individualized based on a bio-psycho-social assessment, diagnostic impression and beneficiary characteristics, including age, gender, culture, and development. Authorized decisions on length of stay, including continued stay, change in level of care and discharge, must be based on the American Society of Addiction Medicine (ASAM) Patient Placement Criteria. Beneficiary participation in referral and continuing care planning must occur prior to discharge.

* * *

12.1.C. ADMISSION CRITERIA

Outpatient services should be authorized based on the number of hours and/or types of services that are medically necessary. Reauthorization or continued treatment should take place when it has been demonstrated that the beneficiary is benefiting from treatment but additional covered services are needed for the beneficiary to be able to sustain recovery independently.

Reauthorization of services can be denied in situations where the beneficiary has:

- not been actively involved in their treatment, as evidenced by repeatedly missing appointments;

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- not been participating/refusing to participate in treatment activities;
- continued use of substances and other behavior that is deemed to violate the rules and regulations of the program providing the services.

Beneficiaries may also be terminated from treatment services based on these violations.

(MPM, Mental Health and Substance Abuse Section,
October 1, 2011, pages 63-65)

Moreover, the program expectations identified for ██████████ Services include: "It is expected that staff and patients treat each other with respect and kindness." (Exhibit F, page 2).

Similarly, the MDCH's Treatment and Recovery Policy regarding the "Criteria for Using Methadone for Medication-Assisted Treatment and Recovery" provides that:

The commission of acts by the individual that jeopardize the safety and well-being of staff and/or other individuals, or negatively impacts the therapeutic environment, is not acceptable and can result in immediate discharge.

* * *

Administrative discontinuation of services can be carried out by two methods:

- 1) Immediate Termination - This involves the discontinuation of services at the time of one of the above safety related incidents or at the time an incident is brought to the attention of the OTP.
- 2) Enhanced Tapering Discontinuation - This involves an accelerated decrease of the methadone dose (usually by 10 mg or 10% a day). The manner in which methadone is discontinued is at the discretion of the OTP physician to ensure the safety and well-being of the individual.

(Exhibit G, pages 9-10)

It is undisputed in this case that Appellant's services were tapered off and discontinued after he urinated into cups during a group session and in the presence of other beneficiaries. (Testimony of Appellant; Testimony of ██████████). ██████████ also

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credibly testified that such behavior violated the program's rules and policies, as described above. (Testimony of [REDACTED]). Additionally, the reports of the incident document the negative effect Appellant's actions had on the other members of the group. (Exhibit D, pages 2-3).

Appellant does not dispute the above facts, but he does argue that the termination of his services was unjustified. (Testimony of Appellant). Appellant asserts that he had no choice but to urinate in the group room because no one was available to escort him to the bathroom and he would not have been able to return to the group session had he left the premises to use a bathroom offsite. (Testimony of Appellant). According to Appellant, while he is sorry for what he did, the termination of his services was unjustified given Appellant's lack of options. (Testimony of Appellant).

However, it is also undisputed that Appellant would not have faced any negative consequences, other than missing the rest of the group session, had he left the session early to use a bathroom offsite. (Testimony of Appellant; Testimony of [REDACTED]). Appellant was not required to attend that particular meeting and, while it was recommended that he go to meetings, he could have simply left instead of engaging in unacceptable behavior. (Testimony of Appellant; Testimony of [REDACTED]).

Appellant's actions negatively impacted the therapeutic environment and violated the rules and regulations of the program providing the services. Therefore, the tapering off and termination of services was justified and the decision to terminate services must be sustained.

DECISION AND ORDER

The 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**.

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

cc:

[REDACTED]

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Date Mailed: 12/14/2011

***** 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.