

**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.** 2012-46282 MCE  
**Case No.** ██████████

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 of Community Health (Department's) denial of an exception from Medicaid Managed Care Program enrollment.

After due notice, a hearing was held on ██████████. ██████████ appeared on behalf of the Appellant. ██████████ 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 ██████████ beneficiary. (Department's Exhibit #1 p.12)
2. The Appellant resides in ██████████. On ██████████, she enrolled in ██████████ enrolled in ██████████ (Appellant's Exhibit #1)
3. The Appellant is in a population that is required to enroll in a Medicaid Health Plan (MHP). (Department's Exhibit A, p. 2)
4. On ██████████ the ██████████ Enrollment Services Section received a managed care exception request from the Appellant's physician, ██████████

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5. [REDACTED] does not participate in the Medicaid Health Plans available to the Appellant in [REDACTED] (Department's Exhibit p. 2)
6. On [REDACTED], the Appellant's request for a managed care exception was denied and the Department sent the Appellant written notice that her request was denied.
7. On [REDACTED], the Michigan Administrative Hearing System received the Appellant's request for an administrative hearing.
8. On [REDACTED] the Appellant's request for Managed Care Exception was reviewed by [REDACTED] the Department decision to deny the Appellant's managed care exception request. (Department's Exhibit, p. 16)

**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 [REDACTED] the Department was notified of the [REDACTED] 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 §9.3, [REDACTED], 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

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.

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The undisputed evidence shows that on [REDACTED], the Appellant's treating physician, [REDACTED] completed a Medical Exception Request form for the Appellant. [REDACTED] indicated on the form that he began treating the Appellant on [REDACTED] and last saw the Appellant on [REDACTED]. [REDACTED] was treating the Appellant every two to four weeks for the following diagnosed conditions: low back pain with lumbar radiculopathy affecting the left leg. A [REDACTED] revealed that the Appellant has [REDACTED] at L3-L4 and L4-L5. According to [REDACTED] report the Appellant cannot stand for long periods of time or walk long distances. The Appellant's back condition was treated with various pain medications. The Appellant is seeking an exception from managed care so she can continue to be treated by [REDACTED]. [REDACTED] does not participate with any of the [REDACTED] available to the Appellant.

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██████████ testified for the Department that the Appellant's exception from managed care must meet three criteria to obtain Department approval. The Appellant must have a serious medical condition which is being actively treated by a physician who does not participate with a n available Medicaid Health Plan. ██████████ testified that the Appellant's request does not show that the Appellant has a serious medical condition which is being actively treated. The information provided by ██████████ shows that the Appellant's back condition is chronic but is not serious. The Appellant's treatment plan includes treatment with medication through nerve blocks and physical therapy. ██████████ indicated that surgery is "possible" but was neither planned nor certain. The treatment services provided and planned by ██████████ are indicative of a chronic back condition which may, in the future, become serious but was not serious at the time of the Appellant's request.

██████████ also testified that ██████████ indicated on the Medical Exception Request that the last treatment for the Appellant was on ██████████ or seven months before the Appellant submitted her exception request. ██████████ correctly pointed out that if the Appellant's condition was serious and not chronic the frequency of her visits with and treatment by ██████████ would be much greater. I agree with ██████████ that if the Appellant was last treated 7 months ago for her back condition then it is likely that the Appellant's back condition is chronic and not serious and is not being actively treated. Therefore the Department correctly concluded that the Appellant's back condition was a non serious chronic condition which was not being actively treated.

The Appellant's representative argues that the ██████████ policy criteria are arbitrary and capacious because the criteria terms are not specifically defined. The Appellant's representative argues that the exception policy does not define the following terms: relatively stable, long term, little immediate risk to health, nor standard medical treatment protocols. The Appellant's representative argues that the criteria are not objective but are subjective and as a result ██████████ and ██████████ opinions regarding the Appellant's eligibility for a medical exception are arbitrary. The Appellant's representative argues that the Appellant's medical condition is serious and clearly requires continued treatment with her physician.

I find that the Department's Medical Exception policy is neither arbitrary nor capricious. The policy criteria, while not perfect, are sufficiently specific to identify Medicaid beneficiaries who would benefit from an exception from managed care. I find that the evidence shows that the Appellant's back condition is a chronic condition and not a serious condition at this time. Therefore the Department properly concluded that the Appellant is not eligible for an exception from managed care. The Appellant has a full range of Medicaid covered services available to her through her Medicaid Health Plan which may be accessed to obtain services that her physician determines are medically necessary to treat the Appellant's back condition.

**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 an exception from managed care.

**IT IS THEREFORE ORDERED** that:

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

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Martin D. Snider  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc: Harryann Bonner  
Gad Holland, Attorney  
Karen Miller

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 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.