

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. 2012-61557 SAS
No. [REDACTED]

[REDACTED]

Appellant

_____ /

DECISION AND ORDER

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

After due notice, a hearing was started on [REDACTED]. However, Appellant's representative requested that the matter be adjourned so that he could have a chance to review the evidence Respondent had submitted and could submit his own evidence. Appellant's representative's request was granted.

The hearing was continued on [REDACTED] [REDACTED], Appellant's father, appeared and testified on Appellant's behalf. Appellant and [REDACTED] were also present as witnesses for Appellant. [REDACTED] Director of Substance Abuse Services, appeared on behalf of the Saginaw County Treatment and Prevention Services. [REDACTED] [REDACTED] and [REDACTED] from [REDACTED] also testified as witnesses for Respondent.

ISSUE

Did the Respondent properly terminate Appellant's 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. Saginaw County Treatment and Prevention Services is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.

██████████
Docket No. 2012-61557 SAS
Decision & Order

2. ██████████ and ██████████ contracts with ██████████ to provide ██████████ assisted treatment to enrollees.
3. Appellant began receiving ██████████ assisted treatment through ██████████ on ██████████ (Exhibit A, page 1).
4. Appellant tested positive for ██████████ on ██████████ and ██████████ (Exhibit C, page 1).
5. Appellant also tested positive for ██████████ on ██████████ ██████████ ██████████. (Exhibit C, page 1).
6. On ██████████, Appellant signed a behavioral contract. That contract stated that Appellant needed to address his positive tests and that Appellant “will need to immediately cease the use of all illicit substances.” (Exhibit D, page 1).
7. Appellant then tested positive for ██████████ on ██████████ and ██████████ ██████████ (Exhibit C, page 1).
8. On ██████████ Appellant was notified that, due to his continued use of illicit substances, he would begin a 60 day taper. (Exhibit E, page 1).
9. That same day, Appellant was also given an Advance Notice of Action stating his services would be terminated as of ██████████ due to his failure to comply with the behavioral contract. (Exhibit F, page 1).
10. Appellant filed a Request for Hearing with the Michigan Administrative Hearing System (MAHS) on ██████████. (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 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 of Community Health (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.*

Pursuant to the MPM, eligible opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy:

**12.2 OFFICE OF PHARMACOLOGICAL AND
ALTERNATIVE THERAPIES/CENTER FOR SUBSTANCE
ABUSE TREATMENT (OPAT/CSAT) APPROVED
PHARMACOLOGICAL SUPPORTS**

Covered services for Methadone and pharmacological supports and laboratory services, as required by OPAT/CSAT regulations and the Administrative Rules for Substance Abuse Service Programs in Michigan, include:

- Methadone medication
- Nursing services
- Physical examination
- Physician encounters (monthly)

- Laboratory tests
- TB skin test (as ordered by physician)

Opiate-dependent beneficiaries may be provided chemotherapy using methadone as an adjunct to therapy. Provision of such services must meet the following criteria:

- Services must be provided under the supervision of a physician licensed to practice medicine in Michigan.
- The physician must be licensed to prescribe controlled substances, as well as licensed to work at a methadone program.
- The methadone component of the substance abuse treatment program must be licensed as such by the state and be certified by the OPAT/CSAT and licensed by the Drug Enforcement Administration (DEA).
- Methadone must be administered by an MD/DO, physician's assistant, nurse practitioner, registered nurse, licensed practical nurse, or pharmacist.
- MDCH Enrollment Criteria for Methadone Maintenance and Detoxification Program (attached to the MDCH/PIHP contract) must be followed. [MPM, Mental Health/Substance Abuse Chapter, April 1, 2012 version, pages 67-68.]

Moreover, with respect to the authorization and termination of such services, the MPM also provides:

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.

██████████
Docket No. 2012-61557 SAS
Decision & Order

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;
- 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/Substance Abuse Chapter, April 1, 2012 version, page 66.]

The criteria for enrollment in and termination from ██████████ maintenance and ██████████ program are outlined in the Treatment Policy provided by Respondent as Exhibit H. That policy similarly identifies clinical noncompliance as a reason for discharge/termination. (Exhibit H, page 6).

Here, Appellant was enrolled in the ██████████ assisted treatment program at ██████████ on ██████████. As discussed above, Appellant tested positive for ██████████ and ██████████ between ██████████ and ██████████. He then signed a behavioral contract expressly stating that Appellant needed to address his positive tests and that Appellant “will need to immediately cease the use of all illicit substances.

Appellant did not testify positive for ██████████ again in the relevant time period, but he continued to test positive for ██████████. Appellant has not provided a prescription for the positive drug test results and they were a clear violation of the behavioral contract he signed and the program’s rules. Accordingly, Appellant’s services were terminated. The evidence of record also establishes that the Department’s agent issued a proper advance action notice of termination.

In response, Appellant and his representative first assert that Appellant was told at the time of his admission to the program that, because his ██████████ use was not the primary focus of his treatment and a lesser concern, positive tests for ██████████ would not result in his treatment being terminated. However, even if Appellant was told that at the time he started treatment, the behavioral contract he signed clearly states that Appellant was to stop the use of all illicit substances and that a continued use would result in a termination.

██████████
Docket No. 2012-61557 SAS
Decision & Order

Appellant and his representative also assert that Appellant was in the process of getting a medical ██████████ and that he informed the staff at ██████████ that he was getting a card. Respondent's witnesses do not dispute that Appellant reported that he was attempting to get a card, but it is also undisputed that he never received such a card. Moreover, without such a card, Appellant's ██████████ use continued to be illegal and no one at ██████████ ever condoned the use. Additionally, as stated above, the behavioral contract Appellant signed clearly states that Appellant was to stop the use of all illicit substances and that a continued use would result in a termination. While Appellant may have wanted a medical ██████████ he never received one and the mere attempt at getting a card does not excuse the positive tests.

Appellant bears the burden of proving by a preponderance of the evidence that the Respondent erred in terminating his services. Here, given the positive tests for marijuana even after Appellant signed a behavioral contract, Appellant has failed to meet that burden. Accordingly, the decision to terminate services should be sustained.

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 methadone assisted treatment.

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: 10/23/2012

***** 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.