

**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. 2012-63460 SAS

Case

No.

Appellant

DECISION AND ORDER

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

After due notice, an expedited hearing was held on [REDACTED].

[REDACTED] appeared on his own behalf.

[REDACTED] represented the [REDACTED].

ISSUE

Did the Respondent properly terminate treatment?

Appellant's outpatient methadone

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 [REDACTED] (DOB 10/23/84) and Medicaid beneficiary. (Exhibits C & G and testimony).
2. Appellant was enrolled in Network 180, the mental health authority for [REDACTED], and authorized for Medication Assisted Treatment, including Individual Therapy, Medication review and [REDACTED] from [REDACTED]. (Exhibits B, C, G).
3. Appellant was receiving his Medicaid covered services through [REDACTED] a provider on the Network 180 provider panel. (Exhibits B & G).

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4. On [REDACTED] Appellant was involved in an altercation directly across the street from the [REDACTED] clinic with another client that escalated into a fist fight between the two. The fight was witnessed by [REDACTED], LLMSW, a [REDACTED] for [REDACTED] (Exhibit C).
5. Appellant's participation in [REDACTED] requires clinical and behavioral compliance; including not loitering within one block of the [REDACTED] program; avoiding loud, boisterous behavior or language; treating staff and other patients with respect and kindness; not engaging in violence or threats of violence or acts that jeopardize the safety and well being of staff or other patients; and, not engaging in assaultive behavior against staff or other patients. Such behaviors can result in medically supervised administrative withdrawal and discharge from the program. (Exhibits D-G).
6. On [REDACTED] the Appellant was given an Advance Action Notice by Mr. Matson for termination of his services in the [REDACTED]. The reason stated was: "violation of clinic guidelines – fighting within a 1 block radius" of the clinic. The notice provided the right to request a fair hearing. (Exhibit A, p. 3).
7. Appellant filed a Request for Administrative Hearing with the [REDACTED] [REDACTED] for the [REDACTED] on [REDACTED] (Exhibit A, p. 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 (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 2012, Part II, Section 2.1.1, pp 26-27.* 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 2012, Part II, Section 2.1.1, pp 26-27.*

Medicaid-covered substance abuse services and supports, including Division of Pharmacological Therapies (DPT)/Center for Substance Abuse Treatment (CSAT) – approved pharmacological supports may be provided to eligible beneficiaries. *MPM, Mental Health/Substance Abuse Chapter, §§ 12.1, July 1, 2012, p 64.*

DPT/CSAT-approved pharmacological supports encompass covered services for ██████████ and supports and associated laboratory services. *MPM, Mental Health/Substance Abuse Chapter, §§ 12.2, July 1, 2012, pp 67-69.* Opiate-dependent patients may be provided therapy using ██████████ or as an adjunct to other therapy.

Discontinuance/Termination of Treatment is governed by *MPM, Mental Health/Substance Abuse Chapter, §§ 12.2.2.F, July 1, 2012, pp 70-71*, which provides:

12.2.F. DISCONTINUATION/TERMINATION CRITERIA [SUBSECTION ADDED 7/1/12]

Discontinuation/termination from ██████████ treatment refers to the following situations:

- Beneficiaries must discontinue treatment with ██████████ when treatment is completed with respect to both the medical necessity for the medication and for counseling services.
- Beneficiaries may be terminated from services if there is clinical and/or behavioral noncompliance.
- If a beneficiary is terminated,:
 - The OTP must attempt to make a referral for another LOC assessment or for placing the beneficiary at another OTP.

- The OTP must make an effort to ensure that the beneficiary follows through with the referral.
 - These efforts must be documented in the medical record.
 - The OTP must follow the procedures of the funding authority in coordinating these referrals.
- Any action to terminate treatment of a Medicaid beneficiary requires a "notice of action" be given to the beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS). The beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS) has a right to appeal this decision, and services must continue and dosage levels maintained while the appeal is in process.

Services are discontinued/terminated either by Completion of Treatment or through Administrative Discontinuation. Refer to the following subsections for additional information. **(added/revised per bulletin MSA 12-11)**

Administrative Discontinuation of Treatment is governed by *MPM, Mental Health/Substance Abuse Chapter, §§ 12.2.F.2, July 1, 2012, p 71-72*, which provides:

12.2.F.2. ADMINISTRATIVE DISCONTINUATION [SUBSECTION ADDED 7/1/12]

Administrative discontinuation relates to non-compliance with treatment and recovery recommendations, and/or engaging in activities or behaviors that impact the safety of the OTP environment or other individuals who are receiving treatment. The OTP must work with the beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS) to explore and implement methods to facilitate compliance.

Non-compliance is defined as actions exhibited by the beneficiary which include, but are not limited to:

- The repeated or continued use of [REDACTED]
- Toxicology results that do not indicate the [REDACTED]. (The same actions are taken as if [REDACTED] including non-prescribed medication, were detected.)

In both of the aforementioned circumstances, OTPs must perform [REDACTED] for [REDACTED] (Administrative Rules for Substance Use Disorder Service Programs in Michigan, R 325.14406).

OTPs must test the beneficiary for ██████████ if use is prohibited under their individualized treatment and recovery plan or the beneficiary appears to be using ██████████ to a degree that would make dosing unsafe.

- Repeated failure to submit to toxicology sampling as requested.
- Repeated failure to attend scheduled individual and/or group counseling sessions, or other clinical activities such as psychiatric or psychological appointments.
- Failure to manage medical concerns/conditions, including adherence to physician treatment and recovery services and use of prescription medications that may interfere with the effectiveness of methadone and may present a physical risk to the individual.
- Repeated failure to follow through on other treatment and recovery plan related referrals. (Repeated failure should be considered on an individual basis and only after the OTP has taken steps to assist beneficiaries to comply with activities.)

The commission of acts by the beneficiary that jeopardize the safety and well-being of staff and/or other individuals, or negatively impact the therapeutic environment, is not acceptable and can result in immediate discharge. Such acts include, but are not limited to, the following:

- Possession of a weapon on OTP property.
- Assaultive behavior against staff and/or other individuals.
- Threats (verbal or physical) against staff and/or other individuals.
- Diversion of controlled substances, including methadone.
- Diversion and/or adulteration of toxicology samples.
- Possession of a controlled substance with intent to use and/or sell on agency property or within a one-block radius of the clinic.
- Sexual harassment of staff and/or other individuals.
- Loitering on the clinic property or within a one-block radius of the clinic.

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

- **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.
- **Enhanced Tapering Discontinuation** - This involves an accelerated decrease of the methadone dose (usually by 10 mg or 10 percent 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 beneficiary.

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It may be necessary for the OTP to refer beneficiaries who are being administratively discharged to the local access management system for evaluation for another level of care. Justification for non-compliance termination must be documented in the beneficiary's chart.
(added/revised per bulletin MSA 12-11)

The evidence in this case demonstrates that administrative discontinuance of Appellant's ██████████ treatment was carried out due to actions by the Appellant that jeopardized the safety and well-being of other individuals and that negatively impacted the therapeutic environment at the Southside Health Center where he was receiving his treatment.

The Respondent's witness ██████████ testified that on ██████████ he witnessed a physical altercation between the Appellant and another ██████████ from the ██████████ clinic. ██████████ witnessed the two engaging in an argument right across the street from the clinic. The argument escalated into a fist fight between the two, and at that point ██████████ reported the matter to the ██████████ at the clinic. ██████████ stated that he was the Appellant's therapist.

██████████ written report contains the following account of the physical altercation:

“On 7/6/12 two clients were involved in a physical altercation observed by this worker from his office window. Both clients were observed directly across the street from the clinic. They appeared to be arguing and were yelling, bumping chests, and finger pointing. Both clients had ample time and space to leave the area, but continued to argue. Client A (Benjamin) shoved client B after client B yelled something directly in client A's face and client B retaliated by punching, both clients immediately began punching each other. . . .” (Exhibit C).

██████████ stated that in making the decision to terminate the Appellant's services, he relied on the MDCH Treatment Policy - 05 “Enrollment Criteria for ██████████ the Life Guidance Services (now ██████████ Program Expectations that the Appellant signed when he entered the ██████████ treatment program, and the policy contained in the ██████████ (Exhibits D-F). Each of the exhibits provide for termination of a ██████████ when the beneficiary engages in behavior that jeopardizes the safety and well-being of staff and/or other individuals, or negatively impacts the therapeutic environment. Such acts include, but are not limited to, loitering within one block of the ██████████ program; loud, boisterous behavior or language; not treating staff and other patients with respect and kindness; engaging in violence or threats of violence; and, engaging in assaultive behavior against staff or other patients.

During his testimony, the Appellant acknowledged that he got in a fight with someone across the street from the clinic. Appellant indicated he was assaulted first and was only protecting himself. Appellant said after he protected himself he left the scene and went back on the property of the clinic. Appellant stated the other person involved in

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the fight was a friend and he went across the street to talk to him. Appellant indicated the other person just lost it and attacked him and he got away just as fast as he could.

The evidence of record establishes that the Department's agent issued a proper advance action notice of termination. The Respondent provided sufficient evidence that its decision to terminate from OMT, including therapy, was proper and in accordance with Department policy. It is clear from the testimony of [REDACTED] that the Appellant engaged in behavior that jeopardized the safety and well-being of another patient from the clinic, and that negatively impacted the therapeutic environment at the clinic.

The testimony of [REDACTED] showed that the Appellant was loitering across the street from the clinic, he engaged in loud and boisterous behavior and language, he engaged in violence or threats of violence, and he engaged in assaultive behavior against another patient from the clinic. Appellant's testimony conflicted with the testimony of the Respondent's witness in that he claimed the other person attacked him and he was only trying to protect himself. However, the Appellant's testimony was self-serving and not particularly worthy of belief, especially in light of the fact that he kept referring to the other person as a "victim".

Appellant has failed to prove, by a preponderance of evidence, that he complied with the behavioral requirements of his outpatient [REDACTED] treatment program. Accordingly, the [REDACTED] properly terminated Appellant's outpatient [REDACTED] treatment.

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 outpatient [REDACTED] treatment program.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

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***** 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.