

**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. 2012-66014 CMH
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 held on [REDACTED]. Appellant appeared and testified on her own behalf. [REDACTED] was also present as a witness for Appellant. [REDACTED] Fair Hearings Officer, appeared on behalf of Network 180, the mental health authority for [REDACTED] and [REDACTED] also testified as witnesses for Respondent.

ISSUE

Did the Respondent properly terminate Appellant's medication assisted 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. Network 180 is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.
2. Network 180 contracts with Cherry Street Health Services to provide medication assisted treatment, including [REDACTED] to enrollees.
3. On [REDACTED] Appellant reviewed and agreed to the program expectations and rules provided by the Southside Health Center. (Exhibit F, pages 1-5).

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4. Appellant tested positive for benzodiazepines while in the program in ██████████ (Exhibit I, page 1; Testimony of ██████████).
5. On ██████████ ██████████ Appellant signed a "Use of Non-prescribed ██████████ Treatment Agreement" in which she agreed that she may not use illicit or prescribed ██████████ and continue to receive ██████████. Appellant also agreed to an observed drug screen in six weeks and that, if she tested positive for ██████████ she would be discharged from the program. (Exhibit G, page 1).
6. Appellant signed another "Use of Non-prescribed ██████████ Treatment Agreement" on ██████████. In that agreement, Appellant again agreed to stop using ██████████ and to submit to another drug screen in six weeks. (Exhibit G, page 1; Testimony of ██████████).
7. On ██████████ Appellant was given a random drug test. During the test, she had another client urinate for her. (Exhibit H, page 1; Testimony of ██████████).
8. Appellant was then asked to take another drug test. She again tried to tamper with the sample and submit another client's urine as her own. (Exhibit H, page 1; Testimony of ██████████).
9. Appellant's second drug test on ██████████ tested positive for ██████████ (Exhibit H, page 1; Exhibit I, page 1).
10. On ██████████ ██████████ Appellant was notified that her ██████████ dosing/counseling would be terminated as of ██████████ because of her tampering with urine screens and continued positive drug tests. (Exhibit C, page 1).
11. Appellant challenged the termination of services through a local appeal, but her local appeal was denied. (Exhibit D; Exhibit J).
12. Appellant filed a Request for Hearing with the Michigan Administrative Hearing System (MAHS) on ██████████ (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 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, July 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.

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, July 1, 2012 version, page 66.]

The criteria for enrollment in and termination from the Medication Assisted Treatment Program are also outlined in the policy signed by Appellant. That policy similarly states that the use of non-prescribed ██████████ is not allowed while a client is in the program and that clinical noncompliance, such as repeated positive drug tests or tampering with drug samples, is a reason for discharge/termination. (Exhibit F, pages 2-6).

Here, the notice of termination provided that Appellant's ██████████ dosing/counseling would be terminated as of ██████████ because of both her tampering with urine screens and continued positive drug tests.

However, the second positive test should be discounted as it was administered too early. As described above, Appellant agreed to an observed drug screen six weeks after signing a "Use of Non-prescribed ██████████ Treatment Agreement" on ██████████

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██████████ According to ██████████ the test is administered six weeks later in order to give the drugs time to clear the system. In this case, however, the drug test took place prior to the six weeks being up and there is no basis for concluding that Appellant was still on ██████████ from that test alone.

Nevertheless, the other separate and independent reason for the discharge, *i.e.* tampering with tests, is valid in this case. ██████████ both noted in her notes at the time and credibly testified during the hearing that she first observed Appellant try to have another client urinate for her and then, after Appellant was ordered to give a new sample, Appellant try to submit another client's urine as her own. The evidence of record also establishes that the Department's agent issued a proper advance action notice of termination.

In response, Appellant does not dispute that the attempts at tampering occurred. Instead, Appellant admits that what she did was wrong, apologizes, and asks that she be given another chance. Appellant also notes that she has been addicted to drugs for thirty years and needs the program to get clean. However, this Administrative Law Judge does not possess equitable jurisdiction and cannot decided things as a matter of fairness. Like the Department, the Administrative Law Judge must follow the applicable policy and, in this case, that policy supports the termination of services.

Appellant bears the burden of proving by a preponderance of the evidence that the Respondent erred in terminating her services. Here, given Appellant's attempts to tamper with her drug tests, 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 medication 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: 10/19/2012

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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.