

**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. 2012-66457 SAS

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 in-person hearing was held on ██████████ ██████████ President of the National Alliance on Mental Illness (NAMI) of ██████████ appeared on behalf of the Appellant. Appellant ██████████ also appeared and testified on his own behalf.

██████████ Corporate Counsel for Kalamazoo County Community Mental Health and Substance Abuse Services, (CMH), appeared on behalf of CMH. ██████████ ██████████ MA LLP, CAADC, a Utilization Review Coordinator, appeared and testified on behalf of CMH.

ISSUE

Did the Respondent properly terminate Appellant's outpatient 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 ██████████ (DOB ██████████) and Medicaid beneficiary. (Exhibits F, K and testimony).
2. Appellant was receiving ██████████ dosing and individual counseling through Kalamazoo County Community Mental Health and Substance Abuse Services at the Victory Clinic. (Exhibits A- F, K and testimony).
3. The Victory Clinic documented Appellant's repeated violations of its program policy for about one year. (Exhibits A-D, F).

Docket No. 2012-66457 SAS
Hearing Decision & Order

4. On [REDACTED] Victory Clinic personally served Appellant with an Action Notice that his [REDACTED] treatment would be reduced by 2 mg per day effective [REDACTED] due to his continued violations of their policies. (Exhibit B).
5. On [REDACTED] Appellant acknowledged that he had been informed he would be placed on an Administrative Medical Supervised Withdrawal from his [REDACTED] treatment. (Exhibit C).
6. On [REDACTED] Appellant contacted Teresa Lewis, LBSW, Customer Services Coordinator for a local appeal of the termination of his [REDACTED] Outpatient Treatment at Victory Clinic. (Exhibit D).
7. On [REDACTED] [REDACTED] MA LLP, CA ADC, conducted a Utilization Management Review of the Appellant's case and recommended that the decision to discharge him from his [REDACTED] treatment and counseling services at Victory Clinic be upheld. (Exhibit F).
8. On [REDACTED] sent Appellant a letter notifying him the decision to terminate his [REDACTED] treatment was upheld in the local appeal. The letter notified Appellant of his rights to a Medicaid Fair Hearing. (Exhibit D).
9. Appellant filed a Request for Administrative Hearing with the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED] (Exhibit E).

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 methadone 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 methadone 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 methadone treatment refers to the following situations:

- Beneficiaries must discontinue treatment with methadone 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 illicit opioids and non-opioid drugs (including alcohol).
- Toxicology results that do not indicate the presence of methadone metabolites. (The same actions are taken as if illicit drugs, including non-prescribed medication, were detected.)

In both of the aforementioned circumstances, OTPs must perform toxicology tests for

Docket No. 2012-66457 SAS
Hearing Decision & Order

methadone metabolites, opioids, cannabinoids, benzodiazepines, cocaine, amphetamines, and barbiturates (Administrative Rules for Substance Use Disorder Service Programs in Michigan, R 325.14406).

OTPs must test the beneficiary for alcohol if use is prohibited under their individualized treatment and recovery plan or the beneficiary appears to be using alcohol 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.

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 [REDACTED] treatment was carried out due to Appellant engaging in activities or behaviors that negatively impacted the safety of the OTP environment or other individuals who were receiving treatment at the Victory Clinic where he was receiving his treatment.

The Respondent's witness, [REDACTED] MA LLP, CA ADC, testified she was a Utilization Review Coordinator for CMH. [REDACTED] stated she reviewed Appellant's clinical records from the clinic, spoke briefly with his therapist, and provided her professional opinion on the action taken in this case to terminate his [REDACTED] treatment program. (Exhibit F).

[REDACTED] noted a number of warnings to Appellant for loitering on the premises of the Clinic and arriving at the clinic early for dosing, which are violations of state policy. (See Exhibit H). She also noted that Appellant repeatedly tested positive for [REDACTED] which in combination with his [REDACTED] posed a great risk for Appellant's health, and which is in violation of his treatment plan. [REDACTED] concluded that the decision to terminate Appellant's [REDACTED] treatment should be upheld due to the repeated noncompliance with the program rules. (See Exhibit F). She stated Appellant's repeated violations tended to place other client's recoveries at risk.

During his testimony, the Appellant admitted he understood what loitering near the treatment center meant. Appellant did admit to loitering around the clinic sometime in [REDACTED]. He claimed he stopped loitering after he was told about it. Appellant indicated he did not remember loitering in [REDACTED]. He admitted signing the warning in [REDACTED] but stated the alleged loitering occurred sometime in [REDACTED] of [REDACTED]. He denied loitering and said he only signed the forms so he could continue receiving his [REDACTED] dosing.

Appellant indicated his normal dosing time was @ 7:30 a.m. and he lives three to four miles from the clinic. He acknowledged going to the clinic on a daily basis since [REDACTED]. Appellant stated he has been receiving [REDACTED] treatment altogether for about 11 years, since he was 40 years old. Appellant stated he has been diagnosed with manic depressive, bipolar disorder, and post traumatic stress disorder. Appellant concluded by stating that he has made some good progress from his [REDACTED] treatment, he has been able maintain a residence, attended school, and has kept in good contact with his children as a result of his treatment.

Docket No. 2012-66457 SAS
Hearing Decision & Order

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 Appellant from OMT, including therapy, was proper and in accordance with Department policy. It is clear from the testimony the Department's witness and supporting documentation that the Appellant engaged in behavior that negatively impacted the therapeutic environment at the Victory Clinic where he was receiving his [REDACTED] treatment. The Department's agent documented numerous violations of the policy contained in the Medicaid Provider Manual, and the policies of the Victory Clinic. (Exhibits A & C).

The testimony of the witnesses showed the Appellant repeatedly tested positive for [REDACTED], he was found loitering on the premises of the clinic after being instructed not to do so, and he was arriving at the clinic before his dosing times. He was suspected of selling his [REDACTED], but no direct proof of this alleged violation was presented at the hearing. All of the foregoing are clear violations of the policy contained in the Medicaid Provider Manual, the policies of the Victory Clinic, and they support the decision for administrative discontinuance of Appellant's [REDACTED] treatment.

Appellant has failed to prove by a preponderance of evidence that he complied with the requirements of his outpatient [REDACTED] treatment program. Accordingly, the Victory Clinic and the CMH acted properly to terminate the 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 James K. Haveman, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 10/08/2012

Docket No. 2012-66457 SAS
Hearing Decision & Order

***** 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.