STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted],

Docket No. 201267488MCE
Case No. [redacted]

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's denial of exception from Medicaid Managed Care Program enrollment.

After due notice, a hearing was held on [redacted]. The Appellant was represented by [redacted]. She had no witnesses. [redacted], Medical Exception Specialist, 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 [redacted]-year-old Medicaid-SSI beneficiary. (Appellant's Exhibit #1)

2. The Appellant resides in [redacted] County. (Appellant's Exhibit #1)

3. The Appellant is in that population required to enroll in a Medicaid Health Plan (MHP). (Department's Exhibit A, p. 2)

4. The Appellant is afflicted with the chronic conditions of; autism, MR, intractable epilepsy. (Department's Exhibit A, pp. 9 and 15)

5. The Appellant is currently enrolled as a Fee-For-Service (FFS) Medicaid recipient and remains so enrolled during this appeal. (Department's Exhibit A, p. 2)

6. On [redacted] and [redacted], the Michigan Department of Community Health Enrollment Services Section received Medical Exception Requests for exception from managed care requests for review from doctors: Dr. [redacted] [PCP], and Dr. [redacted] [neurologist]. (Department's Exhibit A, pp. 2, 9 and 15)

7. The reporting physicians (above) are participating members in managed care plans available to the Appellant. (*See* Department's Exhibit A – throughout)

8. The information submitted by these physicians did not describe the frequency and active treatment (monthly or greater) necessary to authorize exception from managed care. Furthermore, both physicians worked for [redacted] of Michigan and others available for enrollment and membership by the Appellant. (Department's Exhibit A, pp. 2, 11-22)

9. On [redacted] and [redacted], the Appellant's requests for a managed care exception were denied - he was further advised to ask for a case manager to work with him in setting up his medical care need. (Department's Exhibit A, pp. 2, 11-19)

10. On [redacted] and [redacted], the Appellant was sent a denial notification letter that explained his managed care options and his further appeal rights. (Department's Exhibit A, pp. 2, 11-19)

11. On [redacted], the Appellant's Managed Care Exception file was reviewed by MSA Chief Medical Officer, Dr. [redacted], M.D., who upheld the Department's decision. (Department's Exhibit A, pp. 2, 23)

12. The instant request for hearing was received from the Appellant on [redacted]. ((Appellant's Exhibit #1)

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 May 30, 1997, the Department was notified of the Health Care Financing Administration's 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, January 1, 2012, 2010, 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.

***

The Appellant seeks medical exception owing to his multi-level, serious medical condition and the need for medical appointment flexibility.

His representative argued that the Appellant would be better served in the FFS system owing to the vagaries of managed care and the difficulty of medical scheduling. "Its just hard...[,]" the Appellant's representative said.

The Department's witness, [redacted], testified that enrollment in managed care in no way represents a denial or limitation of a consumer's Medicaid – as the MHPs are contractually obligated to provide identical services as supplied in the FFS system.

The MDCH Chief Medical Officer, Dr. [redacted], agreed with the Department reviewers and their conclusions that the Appellant's case did not present with the required frequency or active level of treatment necessary to further justify the requested exception. Indeed, review of the evidence shows that between the submitting physicians there was no frequency of treatment greater than quarterly. His conditions, while serious and complex, were chronic - not acute. [*See* Department's Exhibit A - throughout]

On review, the thrust of the Appellant's argument appears to be that the apparent convenience of FFS was better than that offered by managed care. The ALJ observed that the Appellant's representative was apparently unaware of the many enhancements and expansions of medical service now provided in the managed care system – particularly in Michigan's urban centers. An obviously well prepared advocate for her son the Appellant's representative acknowledged that she was unaware of the many service enhancements available for the Appellant under managed care. [1]

The Appellant has anxiety with the idea of participation in the managed care system.

I gave the testimony of Department witness [redacted] controlling weight. She clearly explained how the Appellant failed to qualify for medical exception and that appropriate treatment could be received within a MHP from the very physicians he desires to control his medical treatment. While the ALJ is sympathetic to the Appellant's malaise with inconvenient treatment - I believe his fears [and those of his representative/mother] are misplaced – as explained in this written communication from the Department to the Appellant on July 18, 2012:

> "Our records show that Dr. [redacted] works with Molina Healthcare of Michigan and the [redacted] Health Plan which you can enroll in.
>
> The specialists at [redacted] accept referrals from all of the health plans. You should ask your health plan for a case manager that can work with you and your providers to help you set up your medical care and any specialty care or services you may need.

1 [redacted] had documentation to prove such healthcare alliances at Depart. Ex. A, pp. 20-23

> The managed care Medicaid Health Plan you enroll with should be able to provide or arrange for the health care services necessary to treat the medical conditions listed in your request, including specialty care."
>
> [Department's Exhibit A, at pages 18 and 19]

The Appellant failed to preponderate his burden of proof.

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 requests for exception from managed care.

IT IS THEREFORE ORDERED that:

> The Department's decision is AFFIRMED.

\s_____
Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[redacted]

cc: [redacted]

Date Mailed: 5/3/2013

***** 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.