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) 373-4147

IN THE MATTER OF:

[redacted]

Docket No. 2013-23198 DISP
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.

After due notice, a hearing was held on [redacted], the Appellant, appeared on [redacted] own behalf. [redacted], represented the Department.

ISSUE

Did the Department properly propose to disenroll the Appellant from HealthPlus Partners on request of the Medicaid Health Plan ("MHP")?

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 an adult Medicaid Beneficiary, who was enrolled in HealthPlus Partners, a MHP. (Exhibit 1, page 10)

2. The Department of Community Health contracts with the MHP to provide Medicaid services to the Appellant and other enrollees.

3. On or about [redacted], the Department's Medical Services Administration ("MSA"), Enrollment Services Section received a request for Special Disenrollment from the MHP regarding the Appellant. The request for disenrollment indicated that the Appellant's proposed discharge was based on alleged violent/threatening behavior and actions inconsistent with membership. (Exhibit 1, pages 10-48)

4. On [redacted], following MSA investigation, the Appellant was sent notice that [redacted] would be disenrolled from the MHP effective [redacted] and placed in Fee for Service Medicaid due to actions inconsistent with plan membership, alleged threatening behavior, and the inappropriate use of multiple emergency rooms for non-emergent

medical conditions and/or drug seeking purposes. (Exhibit 1, page 8)

5. On [redacted], the Appellant's Request for Hearing was received by the Michigan Administrative hearing System. (Exhibit 1, page 7)

6. On [redacted], the Department's consulting physician concurred with the Department's determination to grant the request for special disenrollment because the information provided described violent/threatening behavior to the extent that continued enrollment seriously impairs the health plan and/or provider's ability to safely furnish services and described the inappropriate or misuse of Medicaid covered services, the health plan's and provider's attempts to work with and educate the enrollee on the appropriate use of Medicaid covered services, and that the inappropriate use continued despite those efforts. (Exhibit 1, page 49)

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.

42 CFR § 438.56 Disenrollment: Requirements and limitations.

a. *Applicability.* The provisions of this section apply to all managed care arrangements whether enrollment is mandatory or voluntary and whether the contract is with an MCO, a PIHP, a PAHP, or a PCCM.

b. *Disenrollment requested by the MCO, PIHP, PAHP, or PCCM*. All MCO, PIHP, PAHP, and PCCM contracts must—

1. Specify the reasons for which the MCO, PIHP, PAHP, or PCCM may request disenrollment of an enrollee;

2. Provide that the MCO, PIHP, PAHP, or PCCM may not request disenrollment because of an adverse change in the enrollee's health status, or because of the enrollee's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from his or her special needs (except

when his or her continued enrollment in the MCO, PIHP, PAHP, or PCCM seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees); and

3. Specify the methods by which the MCO, PIHP, PAHP, or PCCM assures the agency that it does not request disenrollment for reasons other than those permitted under the contract.

c. *Disenrollment requested by the enrollee.* If the State chooses to limit disenrollment, its MCO, PIHP, PAHP, and PCCM contracts must provide that a recipient may request disenrollment as follows:

1. For cause, at any time.

2. Without cause, at the following times:

i. During the 90 days following the date of the recipient's initial enrollment with the MCO, PIHP, PAHP, or PCCM, or the date the State sends the recipient notice of the enrollment, whichever is later.

ii. At least once every 12 months thereafter.

iii. Upon automatic reenrollment under paragraph (g) of this section, if the temporary loss of Medicaid eligibility has caused the recipient to miss the annual disenrollment opportunity.

iv. When the State imposes the intermediate sanction specified in §438.702(a)(3)

The Department's Contract disenrollment provisions must comply with the above-cited applicable Federal regulations for Health Plan contracts created under the authority of the Medical Assistance program. Code sections [42 CFR 438.100 and 438.708] provide the mechanism(s) for enrollee protection and the potential for health plan/MCO sanction. Those sections provide;

438.100 Enrollee rights.

a. *General rule*. The State must ensure that--

1. Each MCO and PIHP has written policies regarding the enrollee rights specified in this section; and

2. Each MCO, PIHP, PAHP, and PCCM complies with any applicable Federal and State laws that pertain to enrollee rights, and ensures that its staff and affiliated providers take those rights into account when furnishing services to enrollees.

b. *Specific rights*—

1. *Basic requirement*. The State must ensure that each managed care enrollee is guaranteed the rights as specified in paragraphs (b)(2) and (b)(3) of this section.

2. An enrollee of an MCO, PIHP, PAHP, or PCCM has the following rights: The right to--

i. Receive information in accordance with Sec. 438.10.

ii. Be treated with respect and with due consideration for his or her dignity and privacy.

iii. Receive information on available treatment options and alternatives, presented in a manner appropriate to the enrollee's condition and ability to understand. (The information requirements for services that are not covered under the contract because of moral or religious objections are set forth in Sec. 438.10(f)(6)(xii)).

iv. Participate in decisions regarding his or her health care, including the right to refuse treatment.

v. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience or retaliation, as

specified in other Federal regulations on the use of restraints and seclusion.

vi. If the privacy rule, as set forth in 45 CFR parts 160 and 164 subparts A and E, applies, request and receive a copy of his or her medical records, and request that they be amended or corrected, as specified in 45 CFR Sec. 164.524 and 164.526.

3. An enrollee of an MCO, PIHP, or PAHP (consistent with the scope of the PAHP's contracted services) has the right to be furnished health care services in accordance with 42 CFR 438.206 through 438.210.

c. *Free exercise of rights.* The State must ensure that each enrollee is free to exercise his or her rights, and that the exercise of those rights does not adversely affect the way the MCO, PIHP, PAHP, or PCCM and its providers or the State agency treat the enrollee.

d. *Compliance with other Federal and State laws*. The State must ensure that each MCO, PIHP, PAHP, and PCCM complies with any other applicable Federal and State laws (such as: title VI of the Civil Rights Act of 1964 as implemented by regulations at 45 CFR part 80; the Age Discrimination Act of 1975 as implemented by regulations at 45 CFR part 91; the Rehabilitation Act of 1973; and titles II and III of the Americans with Disabilities Act; and other laws regarding privacy and confidentiality).

438.708 Termination of an MCO or PCCM contract.

A State has the authority to terminate an MCO or PCCM contract and enroll that entity's enrollees in other MCOs or PCCMs, or provide their Medicaid benefits through other options included in the State plan, if the State determines that the MCO or PCCM has failed to do either of the following:

a. Carry out the substantive terms of its contract; or

b. Meet applicable requirements in sections 1932, 1903(m), and 1905(t) of the Act.

The Michigan Department of Community Health (DCH), pursuant to the provisions of the Social Security Act Medical Assistance Program, contracts with the Health Plan of Michigan to provide State Medicaid Plan services to enrolled beneficiaries and ABW recipients.

The Department's contract provides, as follows:

> B. Disenrollment Requests Initiated by the Contractor
>
> 1. Special Disenrollments
>
> The Contractor may initiate special disenrollment requests to DCH based on enrollee actions inconsistent with Contractor membership – for example, if there is fraud, abuse of the Contractor, or other intentional misconduct; or if, the enrollee's abusive or violent behavior posses a threat to the Contractor or provider. The Contractor is responsible for members until the date of disenrollment. Special disenrollment requests are divided into three categories:
>
> a. Violent/life threatening situations involving physical acts of violence; physical or verbal threats of violence made against Contractor providers, staff or the public at Contractor locations; or stalking situations.
>
> b. Fraud/misrepresentation involving alteration or theft of prescriptions, misrepresentation of Contractor membership, or unauthorized use of CHCP benefits.
>
> c. Other actions inconsistent with plan membership. Examples include, but are not limited to, the repeated use of non-Contractor providers without referral or when in-network providers are available; discharge from multiple practices of available Contractor's network providers; inappropriate use of prescription medication or drug seeking behaviors including inappropriate use of emergency room facilities for drug-seeking purposes.
>
> A Contractor may not request special disenrollment based on physical or mental health status of the enrollee.

> If the enrollee's physical or mental health is a factor in the actions inconsistent with plan membership, the Contractor must document evidence of the Contractor's actions to assist the enrollee in correcting the problem, including appropriate physical and mental health referrals. (Exhibit 1, pages 50-51)

The [redacted] testified that after investigation and review, [redacted] approved the MHP's Special Disenrollment request because the submitted information documented threatening behavior to the contractor's staff. The threat occurred during a telephone conversation on [redacted] and was documented by the staff member. At this time, a school shooting was still receiving extensive media coverage. The staff member's report indicates the Appellant said "with the kids being killed the other day I hope you are not messing me around." (Exhibit 1, page 16) The MHP took the threat seriously and a report was made with the police Department. (Exhibit 1, page 11)

Additionally, the [redacted] stated the available information showed utilization of multiple emergency rooms for non-emergent medical conditions and/or drug seeking purposes, changing primary care providers repeatedly to obtain main management services, and not keeping a narcotic contract agreement. For example, the Michigan Automated Prescription System report showed three pharmacies were utilized for filling prescriptions from eight providers of drugs subject to abuse. ([redacted] Testimony and Exhibit 1, pages 42-48)

The documentation was also reviewed by the Department's [redacted]. The [redacted] agreed with the determination to approve the requested disenrollment because the information provided described violent/threatening behavior to the extent that continued enrollment seriously impairs the health plan and/or provider's ability to safely furnish services and described the inappropriate or misuse of Medicaid covered services, the health plan's and provider's attempts to work with and educate the enrollee on the appropriate use of Medicaid covered services, and that the inappropriate use continued despite those efforts. (Exhibit 1, page 49)

The Appellant filed a request for hearing. However, much of the Appellant's testimony and arguments went to issues beyond the scope of this administrative hearing proceeding. This ALJ only has jurisdiction to review the Department's determination to approve the MHP's request for special disenrollment requested.

Regarding the basis for the request for special disenrollment, the Appellant denied making the threat and explained his condition(s) that result in constant pain, [redacted] history of pain management treatment through a primary care provider, why [redacted] sought treatment at the emergency room, and the trouble [redacted] was having obtaining an ongoing provider for pain management treatment. (Appellant Testimony)

The Appellant stated that during the telephone conversation with the MHP [redacted] may have said something about it being terrible the school shooting happened, but [redacted] did not

recall making a threat. The Appellant asserted that what [redacted] said was taken out of context. (Appellant Testimony)

The Appellant explained that [redacted] has had three back surgeries and has twice been in comas. The Appellant was then assaulted [redacted], had a fourth back surgery and is seeking treatment with the laser spine institute. The Appellant has received narcotic pain management for many years and [redacted] doctors stated [redacted] will need narcotic pain management for the rest o[redacted] life. The Appellant stated [redacted] did not violate a pain contract and denied going to emergency rooms for drug seeking purposes. Rather, the Appellant explained that the in the past [redacted] doctor had not considered it a problem for the Appellant to go to the emergency room when [redacted] ran out of medication when the 60 day prescription period was a few days shorter than the period between appointments. (Appellant Testimony)

The Appellant described how the pain affects [redacted] and testified [redacted] has been going through hell to get [redacted] pain management medications. The Appellant used to get [redacted] pain management medications through [redacted] primary care provider, and this is what [redacted] wants again. The Appellant has not been willing to go to pain management clinics because they just do injections and [redacted] will not do that. The Appellant acknowledged utilizing the emergency room, and sometimes taking an ambulance. For example, the Appellant explained that when [redacted] is out of medication and does not have a primary care provider, [redacted] has to go to the hospital for IV pain management. (Appellant Testimony)

The evidence in this case supports the Department's determination to approve the special disenrollment based on the Appellant's threatening behavior toward the contractor. While the Appellant does not recall the statement and indicated [redacted] did not intend to make a threat, the MHP took the statement seriously and a police report was made. (Exhibit 1, pages 11-16) Further, the documentation shows that Appellant has had frequent changes in primary care provider, in large part because [redacted] has declined to be treated by primary care providers who would not prescribe narcotic pain medication and has declined referrals to pain management providers. (Exhibit 1, pages 17, 30 and 34-40) The records also show frequent emergency room visits between [redacted] and [redacted] as well as the use of multiple pharmacies and prescribing providers for drugs subject to abuse. (Exhibit 1, pages 18-28 and 42-48) The Department has presented sufficient evidence to support the approval of the MHP's Disenrollment request due to the verbal threat and actions inconsistent with plan membership.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly granted the MHP's request for Special Disenrollment.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

/s/

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 03/26/2013

***** 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.