

**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:

Docket No. 2013-30840 SAS
[REDACTED]

[REDACTED]
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, a hearing was held on [REDACTED]. [REDACTED] the Appellant, appeared on her own behalf. [REDACTED] Customer Services Coordinator, represented [REDACTED] or Department). [REDACTED], Utilization Manager Substance Abuse, appeared as a witness for the Department.

ISSUE

Did the Respondent properly propose termination of the Appellant's outpatient methadone 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. The Appellant is a [REDACTED]-year-old Medicaid beneficiary, born [REDACTED] (Exhibit 1, page 4)
2. [REDACTED] is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.
3. [REDACTED] contracts with [REDACTED] to provide outpatient methadone treatment (OMT) to [REDACTED] enrollees.

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4. The Appellant entered the OMT program on [REDACTED] due to pregnancy, gave birth on [REDACTED], and was authorized through a [REDACTED] week post-partum period. (Exhibit 1, page 4)
5. The Appellant was given [REDACTED] weeks to taper off the OMT program, which ended [REDACTED]. (Exhibit 1, page 4)
6. On [REDACTED], a request for additional time was received because the Appellant had not begun the taper and discharge process. An additional [REDACTED] days were authorized. (Exhibit 1, page 4)
7. The Appellant has been offered alternative services. (Exhibit 1, page 4; Utilization Manager Testimony)
8. The Appellant has not had prior substance abuse treatment. (Appellant Testimony)
9. On [REDACTED], the Appellant was given an Action Notice and Hearing Rights, stating she was denied partial opiate maintenance therapy effective [REDACTED]. The marked reason stated "the information provided does not support medical necessity for this level of care beyond the allotted amount for taper." The notice provided the right to request a fair hearing. (Exhibit 1, pages 2-3)
10. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System.

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 –



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- (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 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 chemotherapy using methadone as an adjunct a treatment service. *MPM, Mental Health/Substance Abuse Chapter, § 12.2.A, July 1, 2012, page 67*. The MPM also sets out eligibility criteria, admission criteria, and special circumstances for admissions:

12.2.C. ELIGIBILITY CRITERIA [SUBSECTION ADDED 7/1/12]

Medical necessity requirements shall be used to determine the need for methadone as an adjunct treatment and recovery service.

All six dimensions of the American Society of Addiction Medicine (ASAM) patient placement criteria must be addressed:

- Acute intoxication and/or withdrawal potential.
- Biomedical conditions and complications.
- Emotional/behavioral conditions and complications (e.g., psychiatric conditions, psychological or emotional/behavioral complications of known or unknown origin, poor impulse control, changes in mental status, or transient neuropsychiatric complications).
- Treatment acceptance/resistance.
- Relapse/continued use potential.
- Recovery/living environment. **(added/revised per bulletin MSA 12-11)**

12.2.D. ADMISSION CRITERIA [SUBSECTION ADDED 7/1/12]

Decisions to admit an individual for methadone maintenance must be based on medical necessity criteria, satisfy the LOC determination using the six dimensions of the ASAM Patient Placement Criteria, and have an initial diagnostic impression of opioid dependency for at least one year based on current DSM criteria.

Admission procedures require a physical examination. This examination must include a medical assessment to confirm the current DSM diagnosis of opioid dependency of at least one year, as was identified during the screening process. The physician may refer the individual for further medical assessment as indicated.

Consistent with the LOC determination, individuals requesting methadone must be presented with all appropriate options for substance use disorder treatment, such as:

- Medical Detoxification
- Sub-acute Detoxification
- Residential Care
- Buprenorphine/Naloxone
- Non-Medication Assisted Outpatient Treatment
(added/revised per bulletin MSA 12-11)

12.2.D.1. SPECIAL CIRCUMSTANCES FOR ADMISSIONS [SUBSECTION ADDED 7/1/12]

There are special circumstances for the admission of pregnant women, pregnant adolescents, and adolescents.

Pregnant Women

- Pregnant women requesting treatment are considered a priority for admission and must be screened and referred for services within 24 hours.
- Pregnant individuals who have a documented history of opioid addiction, regardless of age or length of opioid dependency, may be admitted to an Opioid Treatment Program (OTP) provided the pregnancy is certified by the OTP physician and treatment is found to be justified.
- For pregnant individuals, evidence of current physiological dependence is not necessary.
- Pregnant opioid-dependent individuals must be referred for prenatal care and other pregnancy-related services and supports, as necessary.

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- OTPs must obtain informed consent from pregnant women, and all women admitted to methadone treatment who may become pregnant, stating that they will not knowingly put themselves and their fetus in jeopardy by leaving the OTP against medical advice.
- Because methadone and opiate withdrawal are not recommended during pregnancy due to the increased risk to the fetus, the OTP shall not discharge pregnant women without making documented attempts to facilitate a referral for continued treatment with another provider.

MPM, Mental Health/Substance Abuse Chapter,
July 1, 2012 version, pages 68-69.

Similarly, [REDACTED] 14.13 has screening and referral criteria as well as special circumstances criteria. (Exhibit 1, pages 14-15) In part, it appears this policy indicates OMT treatment is not considered to be a first route of treatment and typically referrals have had at least two (2) prior treatment episodes. (Exhibit 1, page 14) In the special circumstances section, the policy states:

- ii. Pregnant women requesting or seeking treatment are considered urgent requests and must be screened and referred within 24 hours. Pregnant members, regardless of age, length of Opioid dependence, or who have a documented history of Opioid addiction and are likely to return to Opioid addiction, may be admitted to an OMT program provided the pregnancy is certified by the OMT program physician; and he/she finds treatment to be justified. For pregnant members, evidence of current physiological dependence or a full year of documented opiate addiction is not necessary. Pregnant Opioid dependent beneficiaries must be referred for prenatal care and other services and supports as may be necessary and will be asked to sign ROI to allow VBH to communicate with the Obstetrician. (State Enrollment Criteria, January 2008, p.5.).
- iii. In the event that a pregnant woman is admitted to the OMT program based solely on criteria above and would not otherwise have met the criteria for OMT, it is recommended that the pregnant woman will begin the process of tapering and discharge from OMT six weeks post partum. If the full criteria for OMT was met prior to admission under the criteria for pregnant women, a determination may be made to continue OMT.

In this case, the Appellant entered the OMT program on [REDACTED] due to pregnancy, gave birth on [REDACTED], and was authorized through [REDACTED] week post-partum period. The Appellant would not have otherwise met the criteria for OMT. The Appellant was given [REDACTED] weeks to taper off the OMT program, which ended [REDACTED]. On [REDACTED] a request for additional time was received because the Appellant had not begun the taper and discharge process. An additional [REDACTED] days were authorized. The Appellant has been offered alternative services. The Appellant's dosage has continued pending this appeal. (Exhibit 1, page 4; Utilization Manager Testimony)

The Appellant confirmed she has not had prior substance abuse treatment. The Appellant testified she has been doing so good since starting the program and she is afraid to make changes. The Appellant wants to taper slowly, rather than do it real fast. The only attempt to taper was back in [REDACTED]. The Appellant works with a therapist and has been stable on one dose. They have not talked about tapering since the time was on the high dose. (Appellant Testimony)

The Appellant was admitted under the special circumstances criteria for pregnant women and would not have otherwise met the criteria for OMT. The evidence was sufficient to show that the proposed termination of OMT, with offers of alternative services, was in accordance with the [REDACTED] OMT policy. The Appellant did not prove, by a preponderance of evidence that she met the criteria to remain on OMT. This means that [REDACTED] properly proposed termination of the Appellant's outpatient methadone treatment.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly proposed termination of the Appellant's outpatient methadone treatment program.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is AFFIRMED.

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]

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CL/db

cc:

[REDACTED]

***** 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.