

**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. 2013-33502 MCE

██████████  
Appellant  
\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge (ALJ) 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. ██████████, ██████████ father and Guardian, represented the Appellant. ██████████, Medical Exception and Special Disenrollment Program Specialist, represented the Department.

**ISSUE**

Does the Appellant meet the requirements for a managed care exception?

**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 Medicaid beneficiary. (Exhibit 1, page 8)
2. The Appellant resides in ██████████ County, ██████████. He is a member of the population required to enroll in a Medicaid Health Plan (MHP). (Medical Exception and Special Disenrollment Program Specialist Testimony)
3. The Appellant has been enrolled in ██████████ a MHP, since ██████████ (Medical Exception and Special Disenrollment Program Specialist Testimony)

4. On ██████████, the Michigan Department of Community Health Enrollment Services Section received managed care exception request for the Appellant from ██████████ (Exhibit 1, pages 8-14)
5. On ██████████, the Appellant's request for a managed care exception was denied. The denial notice indicated that ██████████ is a participating provider, as a specialist with a referral from the Appellant's primary care doctor, in at least one MHP available to the Appellant. (Exhibit 1, pages 15-18)
6. On ██████████, the Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, page 7)

### **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.

MDCH Medicaid Provider Manual, Beneficiary Eligibility Section, January 1, 2013, pages 37-38 states in relevant part:

#### **9.3 Medical Exceptions to Mandatory Enrollment**

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 (M.D. or D.O.) 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.

If a beneficiary is enrolled in a MHP, and develops a serious medical condition after enrollment, the medical exception does not apply. The beneficiary should establish relationships with providers within the plan network who can appropriately treat the serious medical condition.

### **9.3.A Definitions**

#### **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 (M.D. or D.O.) 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's request for a medical exception states that he suffers from chronic respiratory failure due to anterior horn disease and has been dependent on tracheostomy and ventilator since birth, dysphagia, developmental delay, contractures, scoliosis and is tube fed. ██████████ sees the Appellant every 6-12 months. (Exhibit 1, page 8)

The Department does not dispute that the Appellant has a serious medical condition. Rather, the Medical Exception and Special Disenrollment Program Specialist explained

that medical exception request was denied because the only information provided was from [REDACTED] is a participating provider, as a specialist with a referral from the primary care doctor, in at least one MHP available to the Appellant, including [REDACTED], the MHP the Appellant is currently enrolled. Therefore, the Department determined that the Appellant did not meet the criteria for a medical exception to mandatory enrollment. (Exhibit 1, pages 8-14 and 19-20; Medical Exception and Special Disenrollment Program Specialist Testimony)

The Appellant disagrees with the Department's determination. The Appellant's father testified that he and his wife do not like changes regarding the Appellant's medical care because things get screwed up. There is no way the Appellant's father could afford to pay for the Appellant's care and he is trying to look out for his son. They do not like the thought of leaving the Medicaid coverage the Appellant had because they know what he is getting there and it is unknown what he will get with the [REDACTED]. The Appellant's father confirmed that [REDACTED] is a specialist who only sees the Appellant about once a year for his respiratory needs, but he had thought this is who should fill out the forms. The Appellant's primary care doctor does not accept [REDACTED] (Father Testimony)

The Medical Exception and Special Disenrollment Program Specialist explained that prior to the denial, she spoke with the Appellant's father on [REDACTED] about any other doctors that were treating the Appellant. At that time the Appellant's father indicated the Appellant did not have primary care provider. (Medical Exception and Special Disenrollment Program Specialist Testimony) The Appellant's father explained that the primary doctor had gone out of the country for a few months, the Appellant's father talked more with that location since he spoke with the Medical Exception and Special Disenrollment Program Specialist, at one point the Appellant was assigned another doctor at that location, and there has also been a concern with a primary doctor assigned to the Appellant that does not normally treat patients the Appellant's age. The Appellant's father has not done anything with [REDACTED] while this appeal has been pending. (Father Testimony)

While this ALJ understands the concerns the Appellant and his parents have about any potential changes to the Appellant's medical care, the request for a medical exception must be reviewed under the above cited policy. This ALJ has reviewed the evidence of record. It does not establish that the Appellant is currently receiving frequent and active treatment for his serious medical conditions with a doctor who does not participate with a MHP, as defined in the Medicaid Provider Manual policy. To the contrary, the evidence documents that [REDACTED] is a participating provider as a specialist with a referral from the primary care doctor, in at least one MHP available to the Appellant. Further, the Department made an attempt to find out about any other doctors that were treating the Appellant before denying the request for a medical exception. Accordingly, the Department's determination that the Appellant did not meet the criteria necessary to be granted a managed care exception must be upheld.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Appellant does not meet the criteria for Medicaid Managed Care exception.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is AFFIRMED.

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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 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.