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. 2013–32669 SAS
Case No. [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]. Appellant appeared and testified on his own behalf.

[redacted], Due Process Manager for [redacted] Health System (formerly [redacted] County Community Mental Health), (CMH), appeared and testified on behalf of the Department (MDCH). [redacted], LMSW, Manager of [redacted], also appeared as a witness for the Department. .

ISSUE

Did the Respondent properly deny the Appellant's request for 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. Appellant is a [redacted] year-old male, (DOB 5/8/79), Medicaid beneficiary. (Exhibit A, p. 1 and testimony).

2. On [redacted], Appellant was given a face-to-face screening in CMH's [redacted] by [redacted], MSW, LMSW. (Exhibit A, pp. 1-15, and testimony).

3. [redacted] determined that the Appellant was not eligible for methadone treatment because he had been administratively discharged from at least one methadone treatment program, for threatening and swearing at his counselor, and non-compliance with the rules, including continued use of illicit drugs

including cocaine and marijuana. The other methadone treatment program listed his discharge as being due to frequent non-compliance, no-shows, and most of his drug screens were positive for THC. Neither of CMH's contracted providers who provide methadone treatment programs were willing to re-admit the Appellant due to the Appellant's past failures in their programs. (Exhibit A, p. 16, and testimony).

4. On [redacted], CMH sent Appellant an Adequate Action Notice that his request for methadone treatment was denied, due to the fact CMH's contracted providers were unwilling to re-admit the Appellant because of his past non-compliance with their programs and rule violations. (Exhibit A, pp. 17-19).

5. On [redacted], MAHS received Appellant's Request for Hearing. (Exhibit 1).

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. *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. *Medicaid Provider Manual, Mental Health/Substance Abuse Chapter,* §§ 12.1, January 1, 2013, p 64. Section 12.1.A. of the *Substance Abuse Chapter* covers eligibility in general for Medicaid-covered substance abuse treatment. It states in part:

> This service is limited to those beneficiaries who will benefit from treatment and have been determined to have:
>
> - an acceptable readiness to change level;
> - minimal or manageable medical conditions;
> - minimal or manageable withdrawal risks;
> - emotional, behavioral and cognitive conditions that will not prevent the beneficiary benefiting from this level of care;
> - minimal or manageable relapse potential; and
> - a minimally to fully supportive recovery environment. [p. 65].

Section 12.1.C. of the *Substance Abuse Chapter* covers the admission criteria in general for Medicaid-covered substance abuse treatment. It states:

> **12.1.C. ADMISSION CRITERIA**
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> Outpatient services should be authorized based on the number of hours and/or types of services that are medically necessary. Reauthorization or continued treatment should take place when it has been demonstrated that the beneficiary is benefiting from treatment but additional covered services are needed for the beneficiary to be able to sustain recovery independently.
>
> Reauthorization of services can be denied in situations where the beneficiary has:
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> - not been actively involved in their treatment, as evidenced by repeatedly missing appointments;
> - not been participating/refusing to participate in treatment activities;

- continued use of substances and other behavior that is deemed to violate the rules and regulations of the program providing the services.
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Beneficiaries may also be terminated from treatment services based on these violations.

DPT/CSAT-approved pharmacological supports encompass covered services for methadone and supports and associated laboratory services. *Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, §§ 12.2, January 1, 2013, pp. 67-69.* Section 12.2.A of the *Substance Abuse Chapter* provides that opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy. The following sections identify the Medicaid-covered services and the eligibility and admission criteria for Methadone treatment:

12.2.B. COVERED SERVICES

Covered services for Methadone and pharmacological supports and laboratory services, as required by DPT/CSAT regulations and the Administrative Rules for Substance Use Disorder Service Programs in Michigan, include:

- Methadone medication
- Nursing services
- Physical examination
- Physician encounters (monthly)
- Laboratory tests (including health screening tests as part of the initial physical exam, pregnancy test at admission, and required toxicology tests)
- TB skin test (as ordered by physician)

12.2.C. ELIGIBILITY CRITERIA

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

12.2.D. ADMISSION CRITERIA

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 [*pp. 68-69*].

The Department's policy regarding medical necessity is found in the *Medicaid Provider Manual, Mental Health/Substance Abuse*, January 1, 2013, pp. 12-14, which provides as follows:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or

- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and

- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

Deny services that are:

- deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
- experimental or investigational in nature; or
- for which there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

  A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

The evidence in this case demonstrates that the Appellant was not eligible for readmission into either of the methadone treatment programs run by the providers who currently contract with CMH. Appellant was screened by the CMH's Access Center and his request for methadone treatment was denied based on his past administrative discharge from one program, and the discharge summary from another demonstrating Appellant's frequent non-compliance, no-shows, and that most of his drug screens were positive for THC. Thereafter, Appellant was offered alternative treatment services of detoxification while engaged in residential treatment, followed by abstinence and a recovery plan that would include participation in 12-step meetings and outpatient therapy, which the Appellant declined.

The Respondent's witnesses stated the Appellant had a face-to-face screening in the [redacted] based upon his request for methadone services on [redacted]. The records of Appellant's prior substance abuse treatment showed he was authorized detox treatment with one of their providers, [redacted] in [redacted], but he did not show for that service. Appellant was authorized for methadone treatment with [redacted] in [redacted] through [redacted], and with [redacted] in [redacted] through [redacted]. Appellant also had a previous authorization for methadone treatment with [redacted] in [redacted].

During the face-to-face screening Appellant identified opiates as his drug of choice. He also indicated he was using illicit methadone and Xanax. His last use of illicit drugs was on the day of the screening. He reported current and past mental health treatment with a diagnosis of bipolar disorder. It was also noted that his brother was helping him get methadone off the street. Appellant's recovery environment indicates he has his own apartment, but has little social support.

Appellant's records demonstrated his [redacted] treatment resulted in an administrative discharge from the methadone treatment program for threatening and swearing at his counselor, and non-compliance with the rules, including continued use of illicit drugs including cocaine and marijuana. The discharge summary from [redacted] showed frequent non-compliance, no-shows, and that most of his drug screens were positive for THC. Furthermore, neither of these contracted providers was willing to re-admit the Appellant due to the Appellant's past failures in their programs.

During his testimony, the Appellant stated his treatment failures were due in part to him not receiving proper mental health care at the time. He said his bipolar condition was not properly controlled, that he had a lack of proper medication. Appellant admitted he was discharged from [redacted] for threatening and swearing at his counselor, and non-compliance with the rules, including continued use of illicit drugs including cocaine and marijuana. Appellant said he was transferred to [redacted] from [redacted], and did not know they had reported that he was administratively discharged.

Appellant also admitted he was continuing to use illicit drugs. He stated he had been using heroin and illicit Methadone his brother was helping him to get off the streets. He admitted he had agreed to detox services from [redacted] in [redacted], but then didn't follow through with the treatment. He said he did not go through with the

treatment, because he decided it wasn't imperative in his life at that time to be come clean. Appellant stated he believes he needs a one stop shop that includes methadone treatment with therapy and group on site, that this is the best opportunity for him to treat his substance abuse problem.

The evidence of record establishes that the Department's agent issued a proper adequate action notice denying Appellant's request for methadone treatment. It was proper to refuse continued treatment that had proven ineffective for the Appellant's condition. Policy makes it clear that reauthorization of services can be denied in situations where the beneficiary has not been actively involved in their treatment, as evidenced by repeatedly missing appointments; has not been participating/refusing to participate in treatment activities; and, has engaged in continued use of substances and other behavior that is deemed to violate the rules and regulations of the program providing the services.

The Respondent has provided sufficient evidence that its decision to deny Appellant methadone treatment, was proper and in accordance with Department policy. It is clear from the testimony of the Department's witnesses and supporting documentation that denial of Appellant's request for methadone treatment was due to Appellant's prior history of unsuccessful treatments, including a recent administrative discharge for threatening and swearing at his counselor, non-compliance with the rules, and continued use of illicit drugs. The record shows that he has a questionable recovery environment, with little social support, and a brother who has been assisting him with obtaining methadone off the streets. Appellant admitted that he continued to use heroin and illicit methadone after refusing the detoxification offered by CMH in [redacted].

Appellant has failed to prove by a preponderance of evidence that the CMH did not properly deny his request for methadone treatment. Accordingly, the Department acted properly to deny the Appellant's request for methadone treatment.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Appellant's request for methadone treatment.

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: 4/19/2013

***** 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 & 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.