

**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. 2013-36666 DISC
Case No. ██████████**

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 ██████████. The Appellant appeared without representation. He had a witness in ██████████. ██████████, disenrollment specialist, represented the Department. She had no witnesses.

ISSUE

Did the Department properly deny Appellant's request for special disenrollment?

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 ██████-year-old male Medicaid Beneficiary enrolled in ██████ Health Plan since ██████.
2. The Department contracts with the Medicaid Health Plans (MHP) to provide State Medicaid Plan services to the Appellant and other enrollees.
3. On ██████████, the Department of Community Health, Enrollment Service Section received a Special Disenrollment For Cause Request from the Appellant requesting disenrollment for himself. Department Exhibit A, pp. 2 and 9.

4. The Appellant was recently diagnosed at 65 per cent deaf¹. On his own initiative he found guaranteed coverage through ██████████ Health Plan – regardless of his age. See Testimony and Department’s Exhibit A, p 9
5. Few medical records were included with this request – however, the request was reviewed and denied because the MHPs are not required to offer them as a benefit under Medicaid. Department’s Exhibit A, p. 11
6. The Department review took place on or about ██████████.
7. Written notice of the denial was sent to the Appellant on ██████████. The Appellant was also advised of his further appeal rights. Department Exhibit A, p. 8.
8. The Michigan Administrative Hearing System (MAHS) for the Michigan Department of Community Health (MDCH) received the Appellant’s Request for Hearing on ██████████.

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.

* * *

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

The Department’s contract provides, as follows:

Disenrollment Requests Initiated by the Contractor

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 poses a threat to the

1 As of the date of hearing 80 per cent.

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 the 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. The Contractor must also document that continued enrollment seriously impairs the Contractor or providers' ability to furnish services to this enrollee or other enrollees. DCH reserves the right to require additional information from the Contractor to assess the appropriateness of the disenrollment. The effective disenrollment date shall be within 60 days from the date DCH received the complete request from the Contractor that contains all information necessary for DCH to render a decision. If the beneficiary exercises their right of appeal, the effective disenrollment date shall be no later than 30 days following resolution of the appeal.

[Contract at §1-B page 21]

(2) Disenrollment for Cause [Initiated by the Enrollee]

The enrollee may request that DCH review a request for disenrollment for cause from a Contractor's plan at any time during the enrollment period to allow the beneficiary to enroll in another health plan. Reasons cited in a request for disenrollment for cause include lack of access to providers or necessary specialty services covered under the Contract or concerns with quality of care. Beneficiaries must demonstrate that appropriate care is not available by providers within the Contractor's provider network or through non-network providers approved by the Contractor.

(Emphasis supplied) MHP Contract, 1.022 §C (2), page 22.

The Appellant testified that he wanted to switch from the ██████████ to the ██████████ to receive needed hearing aides. This would involve a switch outside of regular open enrollment.

The Department witness, ██████████, testified that little medical evidence was submitted.

She said that based on her investigation with the Appellant hearing aides were not a covered benefit under Medicaid – and thus ██████████ was not required to offer that service.

On review, it was clear this was an access to care issue. The Appellant clearly demonstrated that adequate care [receipt of hearing aides for an adult] was not available in his area - from his provider - through his present insurer. ██████████ frankly acknowledged this fact to his PCP, ██████████. [See Department's Exhibit A, at page 10]

It is a fundamental under Medicaid policy that the contractual limits negotiated between the parties, in good faith, are established minimums – below which the Medicaid Health Plan is prohibited from reaching. However, a Medicaid insurer – in this case ██████████ – is free to offer more;

“...[U]nambiguous contracts are not open to judicial construction and must be enforced as written.” *Whitesell Corporation v. Whirlpool Corporation*, 496 Fed Appx 551 (2012)

The evidence has established, as of this writing, that the specialty services the Appellant seeks is available to him, but only if he switches insurance coverage from ██████████ to ██████████. No amount of working with his PCP or insurer will

change the immutable fact – that ██████████ does not offer hearing aids and under their contract with the State of Michigan they are not required to do so.

- However, the Appellant has a specialty medical need and self-discovered remedy.

By the plain reading of the contract it is clear that the Appellant has preponderated his burden of proof to establish that the Department erred by denying his request for Disenrollment for Cause.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied Appellant's request for MHP special disenrollment for cause.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

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

██████████
cc: ██████████

Date Signed: June 24, 2013

Date Mailed: June 24, 2013

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Decision & Order

***** 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.