

**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:

██████████,

Appellant

Docket No. 2013-4548 MCE
Case No. ██████████

_____ /

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 appealing the Department's denial of exception from Medicaid Managed Care Program enrollment.

After due notice, a hearing was held on ██████████. The Appellant appeared as represented by her mother. She had no other witnesses. ██████████, medical exception specialist/MDCH represented the Department. She had no witnesses.

ISSUE

Did the Department properly deny Appellant's request for exception from Managed Care Program enrollment?

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 Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant resides in ██████ County and is in that mandatory population required to enroll in a Medicaid Health Plan. (Department's Exhibit A – page 2)
3. The Appellant is identified as a person with Attention deficit/hyperactivity disorder NOS, Oppositional defiant disorder, Adjustment disorder with mixed disturbed emotions conduct, asthma, perioral deretitis, enuresis "eye condition" [sic] allergic contact dermatitis, recurrent marginal keratitis

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and “pink eye.” (See Testimony of Appellant, Department’s Exhibit A at pp. 9, 10, 16 17 18 21 and Supp A at pp. 5- 9)

4. The Appellant is currently receiving services from [REDACTED] a Medicaid Health Plan – since [REDACTED]. (Department’s Exhibit A, page 2 and Appellant’s Exhibit #1)
5. Between the dates of [REDACTED] and [REDACTED] the Department received six (6) medical exception requests from doctors; [REDACTED] and [REDACTED] [pediatric PCP]; Giles [ophthalmology] [REDACTED] [allergist/immunologist] [REDACTED] [Dermatologist]. (Department’s Exhibit A, pages 3, 9, 10, 16- 18 and 21)
6. All of the reporting physicians are participating members in managed care plans available to the Appellant. (Department’s Exhibit A, pp. 3 and 24 – 35)
7. The information submitted by these exception seeking physicians did not describe active treatment on a frequency of monthly or more and they were participating physicians in managed care plans available to the Appellant. Exception for serious mental illness is covered by the Appellant’s Community Mental Health Services Program in [REDACTED] County. (See Testimony of [REDACTED], Department’s Exhibit A, at pp. 3 and 35)
8. On [REDACTED], [REDACTED] and [REDACTED] the Appellant’s requests for medical exception were denied. Written notification was sent to the Appellant on [REDACTED], [REDACTED] and [REDACTED] repeating the specifics for each denial and likewise informing the Appellant of her further appeal rights. (Department’s Exhibit A, pages 2, 3 and 14, 15, 19, 20, 22, 23)
9. On [REDACTED] the Appellant’s then existing medical exception case file was reviewed by Michigan Department of Community Health Chief Medical Director, [REDACTED], M.D. who upheld the Department’s decision to deny exception to managed care. (Department’s Exhibit A, page 3 and 35 and See Testimony of [REDACTED])
10. The instant appeal was received by the Michigan Administrative Hearing System for the Michigan Department of Community Health on [REDACTED]. (Appellant’s Exhibit #1)

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.

The Medicaid Provider Manual (MPM), Beneficiary Eligibility §9.3, April 1, 2013, page 37, states:

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 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.

The MPM also states at pp. 37-38:

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 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 seeks medical exception owing to her multiple physical and mental illness complaints. Her guardian stresses the need for "direct Medicaid so she can get instant services" owing to the multiplicity of the Appellant's afflictions and delay in receiving prescription medications.

The Department's representative explained the availability of participating physicians in managed care plans used by or available to the Appellant and that the lack of frequency or seriousness of condition did not merit exception from managed care. With regard to receipt of prescription medications and scheduling of frequent medical appointments ██████ advised that the Appellant should request a case manager to assist with the logistics of the Appellant's care.

The Appellant's witness testified that it is a significant burden to coordinate these providers and feared that managed care will not be able or available to accommodate the Appellant.

The Department's witness, ██████, testified that enrollment in managed care in no way represents a denial or limitation of a consumer's Medicaid – as the MHPs are contractually obligated to provide identical services as supplied under the FFS system.

The MDCH Chief Medical Officer, ████████████████████, agreed with the Department reviewer and her conclusion that the Appellant's case did not present with the required frequency or active level of treatment necessary to justify exception from managed care. Indeed, review of the evidence shows that between the submitting physicians there was no frequency of treatment greater than monthly.

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On review, the thrust of the Appellant's argument appears to be that of a need for speedier medical services unavailable through managed care – a conclusion that is not supported by the evidence. In any event under managed care or fee for service – emergent care is always available through a hospital emergency department.

The Appellant's representative has anxiety with the idea of continued participation in the managed care system. According to the Department witness all of her reporting specialists participate in managed care.¹

The Appellant failed to preponderate her burden of proof.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for exception from managed care.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc: [REDACTED]

Date Signed: 8/21/2013

Date Mailed: 8/21/2013

¹ Miller had documentation to prove such alliances at Depart. Ex. A, pp. 24 through 34

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***** 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.