

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. 2013-49191 CMH
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.*, and upon a request for a hearing filed by Appellant.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Fair Hearings Officer, appeared on behalf of Respondent ██████████, therapist; ██████████, receptionist; and ██████████, supervisor; from ██████████ testified on behalf of ██████████.

ISSUE

Did ██████████ properly terminate Appellant's services?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. ██████████ is an authorizing agency for substance abuse services provided under programs administered by the Michigan Department of Community Health (MDCH).
2. ██████████ in turn contracts with Cherry Street Health Services to provide medication assisted treatment, including methadone, to enrollees.
3. ██████████ is one of the locations operated by ██████████.
4. Appellant is a ██████ year-old man who has been diagnosed with Hepatitis C, chronic; Bipolar disorder; Benzodiazepine abuse; and Heroin addiction. (Respondent's Exhibit C, page 1; Respondent's Exhibit F, page 3).

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5. Appellant had been authorized for methadone administration, individual therapy, and medication review through [REDACTED] and was receiving services at the [REDACTED]. (Testimony of Appellant; Testimony of [REDACTED]).
6. On [REDACTED], Appellant engaged in an argument with another client while at the Southside Health Center. (Testimony of Appellant; Testimony of [REDACTED]; Respondent's Exhibit E).
7. According to Appellant, he was upset with the other client because that client, who was Appellant's medical marijuana supplier, had sold all of the marijuana and dropped Appellant as a client without warning. They argued outside of the center and Appellant told the other client that he would do something if he saw him outside the center. (Testimony of Appellant).
8. According to [REDACTED], a receptionist at [REDACTED], she observed an argument between Appellant and another client, including a threat by Appellant to hurt the other client outside the center. She stopped the argument and reported the incident. (Testimony of [REDACTED]).
9. In the Occurrence Report filed by [REDACTED], she also noted that the other client had come in from outside the center and reported feeling unsafe because of a threat by Appellant. The report also stated that Appellant then came in and he and the other continued to argue in front of her. (Respondent's Exhibit E, pages 1-2).
10. After [REDACTED], Appellant's therapist, learned of the incident, he telephoned Appellant and they spoke about Appellant's inappropriate behavior. Appellant agreed to work on his behavior in therapy and they confirmed a [REDACTED] meeting. (Testimony of [REDACTED]; Respondent's Exhibit F, page 1).
11. However, [REDACTED] was unaware at that time that a threat had been made and only knew that Appellant had engaged in loud argument at the center. (Testimony of [REDACTED]).
12. On [REDACTED], Appellant and [REDACTED] met briefly. Appellant expressed his view that the argument was caused by the other client, but also planned to work on his reaction to the other client with [REDACTED]. They set another meeting for [REDACTED]. (Testimony of [REDACTED]; Respondent's Exhibit F, pages 2-3).
13. Appellant also signed a behavior contract indicating that he understood that his recent conduct would not be tolerated and that, if he has a grievance with another person in the future, he will address it properly

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rather than being verbally aggressive. (Respondent's Exhibit D, page 1).

14. On [REDACTED] [REDACTED] learned that Appellant had threatened the other client and, after discussing the situation with his clinical team, they decided to discharge Appellant. (Testimony of [REDACTED]; Respondent's Exhibit F, pages 5-6).
15. On [REDACTED], [REDACTED] met with Appellant, explained that Appellant's services were being terminated, and served Appellant with a discharge/termination letter. (Testimony of [REDACTED]; Respondent's Exhibit F, pages 7-8).
16. The notice provided that Appellant's services would be terminated on [REDACTED]. It is also provided that: "You have threatened another patient with physical violence. Completion and proof of completion of anger management treatment is recommended prior to consideration for readmission." (Respondent's Exhibit C, pages 1-2).
17. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Appellant with respect to the termination of his services. (Respondent's Exhibit A, page 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.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services. [42 CFR 430.0.]

* * *

The State plan is a comprehensive written statement

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submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program. [42 CFR 430.10.]

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent she finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as

it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Community Health (MDCH) operates a sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver.

██████████ is an authorizing agency for substance abuse services provided under programs administered by the MDCH. ██████████ in turn contracts with ██████████ ██████████ to provide medication assisted treatment, including methadone, to enrollees.

As stated in the applicable version of Michigan Medicaid Provider Manual (MPM), April 1, 2013 version, Mental Health/Substance Abuse Services Chapter, pages 67-74, the methadone administration that Appellant was receiving in this case is among the substance abuse services that may be provided by entities such as ██████████.

With respect to the discontinuation or termination of such methadone treatment, the MPM provides:

12.2.F. DISCONTINUATION/TERMINATION CRITERIA

Discontinuation/termination from methadone treatment refers to the following situations:

- Beneficiaries must discontinue treatment with methadone when treatment is completed with respect to both the medical necessity for the medication and for counseling services.
- Beneficiaries may be terminated from services if there is clinical and/or behavioral noncompliance.
- If a beneficiary is terminated,:
 - The OTP must attempt to make a referral for another LOC assessment or for placing the beneficiary at another OTP.
 - The OTP must make an effort to ensure that the beneficiary follows through with the referral.
 - These efforts must be documented in the medical record.
 - The OTP must follow the procedures of the funding authority in coordinating these referrals.
- Any action to terminate treatment of a Medicaid beneficiary requires a "notice of action" be given to the beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS). The beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS) has a right to appeal this decision, and services must continue and dosage levels maintained while the appeal is in process.

Services are discontinued/terminated either by Completion of Treatment or through Administrative Discontinuation. Refer to the following subsections for additional information.

12.2.F.1. COMPLETION OF TREATMENT

The decision to discharge a beneficiary must be made by the OTP's physician, with input from clinical staff, the beneficiary, and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS). Completion of treatment is determined when the beneficiary has fully or substantially achieved the goals listed in their individualized treatment and recovery plan and no longer needs methadone as a medication. As part of this process, a reduction of the dosage to a medication-free state (tapering) should be implemented within safe and appropriate medical standards.

12.2.F.2. ADMINISTRATIVE DISCONTINUATION

Administrative discontinuation relates to non-compliance with treatment and recovery recommendations, and/or engaging in activities or behaviors that impact the safety of the OTP environment or other individuals who are receiving treatment. The OTP must work with the beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS) to explore and implement methods to facilitate compliance.

Non-compliance is defined as actions exhibited by the beneficiary which include, but are not limited to:

- The repeated or continued use of illicit opioids and non-opioid drugs (including alcohol).
- Toxicology results that do not indicate the presence of methadone metabolites. (The same actions are taken as if illicit drugs, including non-prescribed medication, were detected.)

In both of the aforementioned circumstances, OTPs must perform toxicology tests for methadone metabolites, opioids, cannabinoids,

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benzodiazepines, cocaine, amphetamines, and barbiturates (Administrative Rules for Substance Use Disorder Service Programs in Michigan, R 325.14406).

OTPs must test the beneficiary for alcohol if use is prohibited under their individualized treatment and recovery plan or the beneficiary appears to be using alcohol to a degree that would make dosing unsafe.

- Repeated failure to submit to toxicology sampling as requested.
- Repeated failure to attend scheduled individual and/or group counseling sessions, or other clinical activities such as psychiatric or psychological appointments.
- Failure to manage medical concerns/conditions, including adherence to physician treatment and recovery services and use of prescription medications that may interfere with the effectiveness of methadone and may present a physical risk to the individual.
- Repeated failure to follow through on other treatment and recovery plan related referrals. (Repeated failure should be considered on an individual basis and only after the OTP has taken steps to assist beneficiaries to comply with activities.)

The commission of acts by the beneficiary that jeopardize the safety and well-being of staff and/or other individuals, or negatively impact the therapeutic environment, is not acceptable and can result in immediate discharge. Such acts include, but are not limited to, the following:

- Possession of a weapon on OTP property.
- Assaultive behavior against staff and/or other individuals.

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- Threats (verbal or physical) against staff and/or other individuals.
- Diversion of controlled substances, including methadone.
- Diversion and/or adulteration of toxicology samples.
- Possession of a controlled substance with intent to use and/or sell on agency property or within a one-block radius of the clinic.
- Sexual harassment of staff and/or other individuals.
- Loitering on the clinic property or within a one-block radius of the clinic.

Administrative discontinuation of services can be carried out by two methods:

- **Immediate Termination** - This involves the discontinuation of services at the time of one of the above safety-related incidents or at the time an incident is brought to the attention of the OTP.
- **Enhanced Tapering Discontinuation** - This involves an accelerated decrease of the methadone dose (usually by 10 mg or 10 percent a day). The manner in which methadone is discontinued is at the discretion of the OTP physician to ensure the safety and well-being of the beneficiary.

It may be necessary for the OTP to refer beneficiaries who are being administratively discharged to the local access management system for evaluation for another level of care. Justification for non-compliance termination must be documented in the beneficiary's chart.

[MPM, April 1, 2013 version, Mental Health/Substance Abuse Services Chapter, pages 70-73.]

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In this case, ██████████ decided to immediately terminate Appellant's services after finding that he had verbally threatened another client. In support of that determination, ██████████ relies primarily on the testimony and report given by Kasen regarding the threat she observed and reported.

Appellant bears the burden of proving by a preponderance of the evidence that ██████████ erred in terminating his services.

Here, ██████████ credibly testified as to what she observed and she promptly reported Appellant as making a threat toward another client. Appellant himself does not appear to dispute the substance of ██████████ report or her testimony regarding what he said and, instead, merely claims that she could not have heard what he said to the other client. Moreover, while Appellant claims that he did not mean what he said as a threat, he acknowledges what he said during the intense argument and his statements could clearly be construed as a threat. Kasen reported the statements as a threat and the other client also informed her that he did not feel safe.

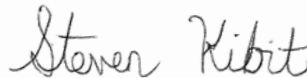
Given the above evidence, ██████████ properly found that Appellant had verbally threatened another client. Appellant has therefore failed to meet his burden of proof and the decision to terminate his services must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that ██████████ properly terminated Appellant's services.

IT IS THEREFORE ORDERED that:

██████████'s decision is **AFFIRMED**.



Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

██████████
Date Signed: 7/26/2013

Date Mailed: 7/26/2013

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cc: Eric John Anderson
Stacy O'Toole
Deb Ziegler

***** 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.