

**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. 2013-50020 MCE

Case No. ██████████

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 ██████████. ██████████, the Appellant, appeared on her own behalf. ██████████, 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 ██████ year-old Medicaid beneficiary.
2. The Appellant resides in ██████████. She 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 ██████████ since ██████████. (Medical Exception and Special Disenrollment Program Specialist Testimony)

4. On [REDACTED], the Michigan Department of Community Health Enrollment Services Section received managed care exception request from the Appellant's nurse practitioner, [REDACTED]. (Exhibit 1, page 8)
5. On [REDACTED], the Appellant's request for a managed care exception was denied. The denial notice indicated: the Appellant has been enrolled in [REDACTED] for more than 2 months and that D [REDACTED] is a participating provider in at least one of the MHPs available to the Appellant. (Exhibit 1, pages 9-10)
6. On [REDACTED], 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, April 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.

(Underline added by ALJ)

The Appellant's request for a medical exception indicates that she suffers from: chronic back pain, neck pain and muscle spasms; a ██████ MRI showed mild stenosis of left L5-S1, 2° degenerative disease and foraminal paracentral disc protrusion on the left; and a recently stated diagnosis of fibromyalgia. Nurse Practitioner ██████ indicated the frequency of visits varies, one to six times per year. Nurse Practitioner ██████ did not indicate whether or not she participates with any of the MHPs. (Exhibit 1, page 8)

In reviewing the Appellant's medical exception request, the Department noted that the request for the medical exception was received after the two month period allowed by the Medicaid policy. The Department further verified that Nurse Practitioner ██████ is a participating provider in at least one Medicaid Health Plan available to the Appellant, including ██████. Additionally, the information provided by Nurse Practitioner ██████ showed standard treatment for chronic medical conditions, rather than active treatment for a serious medical condition as defined in the Medicaid Provider Manual policy. Accordingly, the Department determined that the Appellant did not meet the criteria for a medical exception to mandatory enrollment. (Exhibit 1, pages 8 and 13; Medical Exception and Special Disenrollment Program Specialist Testimony)

The Appellant disagrees with the Department's determination. The Appellant questioned what services are available for her. The Appellant stated she has not been able to go to physical therapy, cannot see a nerve doctor, and has limited visits at the pain clinic. The Appellant indicated the MHP denies everything, even when she gets referrals. The Appellant has chronic back pain and can barely walk. The Appellant feels like her health is being played with. (Appellant Testimony)

The Medical Exception and Special Disenrollment Program Specialist explained that the Appellant also has appeal rights with the MHP. (Medical Exception and Special Disenrollment Program Specialist Testimony) Accordingly, the Appellant can file requests for hearing to contest any denials of Medicaid covered services by the MHP.

This hearing is limited to reviewing whether the Appellant met the criteria for a medical exception. The evidence of record has been reviewed. It does not establish that the Appellant submitted a timely request for a medical exception or that she is currently receiving frequent and active treatment for a serious medical condition 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 Nurse Practitioner ██████ is available to the Appellant through several MHPs available to the Appellant, including the MHP Appellant is enrolled in. The evidence further indicates that Nurse Practitioner ██████ only sees the Appellant one to six times per year for standard treatment of chronic conditions. Accordingly, the evidence does not establish that the Appellant meets the criteria necessary to be granted a managed care exception at this time.

[REDACTED]
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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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Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: 8/12/2013

Date Mailed: 8/12/2013

[REDACTED]
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.