

**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. 2013-56124 SAS
[REDACTED]

[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] [REDACTED] the Appellant, appeared on his own behalf. [REDACTED] Process Improvement Facilitator, represented [REDACTED] or Department). [REDACTED], Quality Improvement Manager, appeared as a witness for the Department.

ISSUE

Did the Respondent properly propose termination of the Appellant's outpatient methadone treatment (OMT)?

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 [REDACTED]-year-old Medicaid beneficiary, born [REDACTED] (Exhibits 1 and 2)
2. [REDACTED] is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.
3. [REDACTED] contracts with [REDACTED] to provide OMT to [REDACTED] enrollees.
4. The Appellant has been receiving OMT through [REDACTED] since [REDACTED] (Hearing Summary)

5. The Appellant's participation in OMT requires that he inform the clinic if he is taking prescribed or over-the-counter medications and if he is being prescribed medication there must be coordination (or documentation of efforts if the prescribing practitioner does not respond) between the clinic and the prescribing practitioner. (Exhibit 7; Exhibit 9)
6. On ██████████, ██████████ sent the Appellant a letter stating: a ██████████ (██████████) report disclosed that he received prescriptions for controlled substances in the past month. Clinic policy requires that such medications be documented by the clinical nursing staff weekly and the Appellant is in violation of this policy. The letter further stated that any further violations of clinic policy will result in discharge from the program. (Exhibit 5)
7. On ██████████ sent the Appellant a letter stating a ██████████ report disclosed that he received prescriptions for controlled substances since the ██████████ letter informing him that not documenting prescriptions for controlled substances is a violation of clinic policy. (Exhibit 8)
8. On ██████████, the Appellant was given an Advance Notice of Action, stating he would be terminated from the OMT program. The reason stated was: "Violation of Clinic Policy regarding documentation of prescribed controlled substances." The notice provided the right to request a local appeal and/or a Medicaid fair hearing. (Exhibit 1)
9. On ██████████, the Appellant requested a local appeal. (Exhibit 2)
10. On ██████████ conducted a local appeal and upheld the decision to terminate services. (Exhibit 3, page 1)
11. On ██████████, the Local Appeal Notice of Disposition was mailed to the Appellant. The notice provided the right to request a Medicaid Fair Hearing. (Exhibit 3, pages 2-3)
12. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Request for Hearing)

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.

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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 2009, Part II, Section 2.1.1, p 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 (MPM). *Contract FY 2009, Part II, Section 2.1.1, p 27.*

Medicaid-covered substance abuse services and supports, including Division of Pharmacological Therapies/Center for Substance Abuse Treatment (DPT/CSAT) – approved pharmacological supports may be provided to eligible beneficiaries. *MPM, Mental Health/Substance Abuse Chapter, §§ 12.1 Covered Services-Outpatient Care, April 1, 2013, pages 64-66.*

DPT/CSAT-approved pharmacological supports encompass covered services for methadone and supports and associated laboratory services. *MPM, Mental Health/Substance Abuse Chapter, §§ 12.2 Treatment (DPT/CSAT) Approved Pharmacological Supports, April 1, 2013, pages 67-73.* Opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy.

The Medicaid Provider Manual 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.

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

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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.)

Medicaid Provider Manual
Mental Health/Substance Abuse Section
April 1, 2013, pages 70-72

The Appellant has been receiving OMT through [REDACTED] since [REDACTED] (Hearing Summary)

The Appellant's participation in OMT requires that he inform the clinic if he is taking prescribed or over-the-counter medications and if he is being prescribed medication there must be coordination (or documentation of efforts if the prescribing practitioner does not respond) between the clinic and the prescribing practitioner. (Exhibit 7; Exhibit 9) The Quality Improvement Manager testified that the Appellant violated policy by not reporting all medications that he receives during the course of his treatment. Failing to do so violated the Michigan Department of Community Health, [REDACTED] and [REDACTED] (Quality Improvement Manager Testimony; Exhibit 9)

[REDACTED] provided a copy of a [REDACTED] report showing the Appellant filled prescriptions for controlled substances in [REDACTED] and [REDACTED] (Exhibit 6)

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On [REDACTED] sent the Appellant a letter stating a [REDACTED] report disclosed that he received prescriptions for controlled substances in the past month. Clinic policy requires that such medications be documented by the clinical nursing staff weekly and the Appellant is in violation of this policy. The letter further stated that any further violations of clinic policy will result in discharge from the program. (Exhibit 5)

On [REDACTED] sent the Appellant a letter stating a [REDACTED] report disclosed that he received prescriptions for controlled substances since the [REDACTED] letter informing him that not documenting prescriptions for controlled substances is a violation of clinic policy. (Exhibit 8)

The Appellant disagrees with the termination of OMT. The Appellant testified that when he received the first notice he remembers that they handed him something but they did not exactly explain it. In [REDACTED] one week after he received the second notice, the Appellant brought his pills in and gave them to the nurse. The Appellant thought if he brought his pills in to show that he was not abusing this would be acceptable. (Appellant Testimony)

On [REDACTED] the Appellant signed several documents, including: [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED] Form. (Exhibit 7) Under the [REDACTED], and [REDACTED] it is clear that if he is taking prescribed medications the Appellant was required to inform the clinic nurse and counselor, provide written consent for communication between the clinic and the physician. The [REDACTED] [REDACTED] also indicates that the clinic will conduct a [REDACTED] search on everyone in the clinic, there is a form the clinic will give to the Appellant to have the doctor sign and return if there is a prescription for controlled substances and what can happen if the form is not returned and the prescription continues to be filled, including possible discharge from the clinic. Lastly, the [REDACTED] Form again emphasizes **"It is mandatory that all prescriptions for controlled substances be documented in the patient record.** Failure to present controlled substances for documentation may be grounds for discharge." (Exhibit 7)

Further, on [REDACTED] sent the Appellant the first letter that he was in violation of clinic policy based on a [REDACTED] report showing that he received prescriptions for controlled substances in the past month, reminding him of the clinic policy requiring that such medications be documented by the clinical nursing staff weekly and stating that any further violations of clinic policy will result in discharge from the program. (Exhibit 5) By his own testimony, the Appellant did not bring his medication into the clinic until a week after the [REDACTED] notice from [REDACTED] (Appellant Testimony)

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The Department provided sufficient evidence that its decision to terminate Appellant from OMT, including therapy, was proper and in accordance with Department policy. The Appellant did not prove, by a preponderance of evidence that he complied with his outpatient methadone treatment program. This means that the [REDACTED] properly terminated Appellant's outpatient methadone treatment.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly proposed termination of the Appellant's outpatient methadone treatment program.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is AFFIRMED.

/s/

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

CL/db

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 & 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.