

**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. 2013-61785 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], Substance Abuse Counselor, appeared as a witness for the Appellant. [REDACTED], Corporate Counsel, represented Respondent, [REDACTED] County Community Mental Health and Substance Abuse Services ([REDACTED] or Department). [REDACTED] Quality Improvement Manager, and [REDACTED] Customer Services Manager, appeared as witnesses for [REDACTED]

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] (Exhibit 1)
2. The Appellant has been receiving the Medicaid Covered service of therapy and pharmacological supports (methadone) at [REDACTED] which is a licensed Methadone provider. (Exhibit 1)
3. [REDACTED] is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health.

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4. [REDACTED] contracts with [REDACTED] to provide OMT to enrollees.
5. The Appellant has been receiving OMT through [REDACTED] since [REDACTED]. The Appellant was discharged in [REDACTED] due to a jail stay and reinstated in [REDACTED]. (Exhibit 1, page 9)
6. The Appellant's participation in OMT requires prohibition from the use of drugs not included in his treatment plan. (Quality Improvement Manager Testimony; Exhibit 1, pages 29-30)
7. Of the [REDACTED] urine drug screen administered between [REDACTED] and [REDACTED] have been positive for cocaine, [REDACTED] have been positive for amphetamines, and [REDACTED] have been positive for benzodiazepines. (Exhibit 1, page 34)
8. On [REDACTED], the Appellant was given an Advance Notice of Action, stating he would be terminated from the OMT program. The stated reason was failure to meet expectations of [REDACTED] OMT agreement. (Exhibit 1, page 3)
9. The Appellant requested a local appeal. (Exhibit 1, page 1)
10. On [REDACTED] issued the Appeal Disposition to the Appellant from the local appeal, upholding the decision to terminate services. The reason for the decision noted that the Appellant has consistently tested positive in urine drug screens, it does not appear that he has been successful with this level of care, and methadone treatment services are not medically necessary for him at this time. The notice provided the right to request a Medicaid Fair Hearing. (Exhibit 1, pages 4-5)
11. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 6-7)

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.

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).

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

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The methadone maintenance and detoxification program, as outlined in the Department's requirements, prohibits the use of illicit drugs not otherwise prescribed by a physician. Of the ██████████ urine drug screen administered between ██████████ and ██████████ ██████████ have been positive for cocaine, ██████████ have been positive for amphetamines, and ██████████ have been positive for benzodiazepines. (Exhibit 1, page 34)

The Quality Improvement Manager testified that she reviewed Appellant's case to determine if the decision to administratively discharge Appellant from the methadone program was proper. The Quality Improvement Manager determined based on this review that the clinic's decision to administratively discharge Appellant from the methadone program was proper based on Appellant's repeated positive drug screens. (Quality Improvement Manager Testimony)

The Appellant disagrees with the termination of OMT. The Appellant testified he did not dispute any of the paperwork submitted by ██████████, but noted for the review only paperwork was looked at. The Appellant requests one more chance, one more probation period to show he is serious this time. The Appellant will be ██████████ years old and finally has his two kids back in his life. The Appellant has been an addict since he left his mother's womb. The Appellant did not start to realize and work on this until ██████████ years ago when he met the current Substance Abuse Counselor, who is the only one that has gotten through to the Appellant. The Appellant got rid of a lot of triggers, but then things started to happen. The Appellant acknowledged that he does stupid things when he gets angry. The Appellant noted that he did good in his life when he was on methadone in the past. The Appellant is afraid he will lose his sons and end up in prison. (Appellant Testimony) The Appellant also submitted a letter he wrote as well as a letter from his son. (Exhibits A and B)

The Substance Abuse Counselor testified that the Appellant wanted to be heard as a person, and not just have another paperwork review. (Substance Abuse Counselor Testimony)

██████████ and this ALJ must review the Appellant's case under the applicable Medicaid Provider Manual Policy. ██████████ 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. Rather, the evidence of the Appellant repeatedly having positive urine drugs screens was uncontested. Accordingly, ██████████ properly terminated Appellant's outpatient methadone treatment.

At the end of the in-person hearing proceedings, there was some discussion about other options for the Appellant. The Appellant may wish to consider these other treatment options.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Department 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: Jeffrey Lindahl
Teresa Lewis
Mike Schlack
Deborah Hollis

***** 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.