

**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. 2013-69754 BCC  
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.

After due notice, a hearing was held on ██████████. Appellant appeared on her own behalf.

██████████, Certified Breast Cancer and Oncology Nurse, and Senior Nurse Consultant for the Breast and Cervical Cancer Prevention and Treatment Program, represented the Department of Community Health (Department).

**ISSUE**

Did the Department properly terminate Appellant from the Breast and Cervical Cancer Control Program (BCCCP) and therefore her Medicaid coverage through BCCCP?

**FINDINGS OF FACT**

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

1. On ██████████, the federal Medicaid BCCCP Medicaid Treatment Act became effective.
2. In ██████████, Appellant was diagnosed with cervical cancer. Appellant's diagnosis made her eligible for the BCCCP and she was enrolled in Medicaid. (Exhibit A, p 2; Testimony)
3. Clients enrolled in the BCCCP Medicaid treatment program are eligible to receive Medicaid coverage as long as they meet the program's eligibility criteria and are receiving treatment for their breast or cervical cancer. (Exhibit A, pp 4-6; Testimony).
4. Appellant received both chemotherapy and radiation therapy for her cervical cancer during ██████████ and the beginning of ██████████. Her actual treatment was completed in ██████████ but she was left on MCCCCP for another

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year for close follow-up to be sure she had no cancer recurrence. (Exhibit A, pp 2-3; Testimony).

5. On [REDACTED], Appellant saw [REDACTED], MD for the results of an MRI and CAT scan of the abdomen and pelvis. At that time, [REDACTED] stated that there was no evidence of metastatic disease. Appellant was not complaining of problems that may have indicated metastatic disease and her last Pap smear/HPV test was negative. (Exhibit A, pp 7-8; Testimony)
6. In [REDACTED], Appellant again saw [REDACTED] who reaffirmed that she still had no evidence of recurrent cervical cancer at that time. (Exhibit , pp 8-9; Testimony)
7. Because Appellant had completed treatment for her cervical cancer, she no longer met the BCCCP criteria and her coverage was terminated effective [REDACTED]. (Exhibit A; Testimony)
8. Appellant will still require surveillance Pap tests and these can still be provided through the BCCCP. (Exhibit A; Testimony)
9. On [REDACTED], the Michigan Administrative Hearing System received Appellant's request for hearing. (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. The Department implements a Breast and Cervical Cancer Control Program (BCCCP). The Michigan Medicaid Provider Manual (MPM) outlines the eligibility criteria and services covered for the BCCCP:

**2.1 BREAST AND CERVICAL CANCER CONTROL PROGRAM**

**2.1.A. ELIGIBLE BENEFICIARIES**

The Breast and Cervical Cancer Control Program (BCCCP) covers uninsured low-income women of all ages, especially but not limited to, women aged 40-64. Certain income restrictions do apply.

- Insured women may apply if certain insurance, age, and income requirements are met.
- Women who are enrolled in a managed care program, health maintenance organization (HMO) or have Medicare Part B are not eligible.

## **2.1.B. COVERED SERVICES**

Covered services include:

- Clinical breast exams
- Pap smears
- Pelvic exams
- Screening mammogram, and
- Appropriate referral to community providers for follow up of abnormalities.

Breast biopsy, colposcopy-directed services, colposcopy service, diagnostic mammograms, and loop electrosurgical excision procedure (LEEP) may be provided based upon medical needs, financial and insurance status, and availability of federal grant funds or Michigan tobacco tax dollars.

*MPM, Special Programs  
July 1, 2013, p 2*

The Centers for Medicare and Medicaid provide guidance about the BCCCP as follows:

### **The Breast and Cervical Cancer Prevention and Treatment Act of 2000**

On October 24, 2000, the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106-354) was signed into law. This Act, which has an effective date of October 1, 2000, gives states the option to provide medical assistance through Medicaid to eligible women who were screened through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and found to have breast or cervical cancer, including pre-cancerous conditions.

Specifically, Public Law 106–354 of the 106th Congress provides:

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Breast and Cervical Cancer Prevention and Treatment Act of 2000”.

#### **SEC. 2. OPTIONAL MEDICAID COVERAGE OF CERTAIN BREAST OR CERVICAL CANCER PATIENTS.**

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A. COVERAGE AS OPTIONAL CATEGORICALLY NEEDY GROUP.

1. IN GENERAL. —Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended:
  - A. in subclause (XVI), by striking “or” at the end;
  - B. in subclause (XVII), by adding “or” at the end; and
  - C. by adding at the end the following: (XVIII) who are described in subsection (aa) (relating to certain breast or cervical cancer patients).
  
2. GROUP DESCRIBED. —Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following:
  - A. Individuals described in this subsection are individuals who:
    1. are not described in subsection (a)(10)(A)(i);
    2. have not attained age 65;
    3. have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) in accordance with the requirements of section 1504 of that Act (42 U.S.C. 300n) *and need treatment for breast or cervical cancer*; and
    4. are not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)). (Italics added).

Public Law 106–354 also specified that eligibility for Medicaid was limited to the period of time an individual was receiving treatment for cervical cancer:

3. LIMITATION ON BENEFITS

Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (G)—

- A. by striking “and (XIII)” and inserting “(XIII)”; and
- B. by inserting “, and (XIV) the medical assistance made available to an individual described in subsection (aa)

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who is eligible for medical assistance only because of subparagraph (A)(10)(ii)(XVIII) shall be *limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer*” before the semicolon. (Italics added).

The Department witness testified that the Breast and Cervical Cancer Control Program requires that a person must be receiving treatment for their breast or cervical cancer in order to remain in the program. The Department witness indicated that in ██████████, Appellant was diagnosed with cervical cancer, which made her eligible for the BCCCP and she was enrolled in Medicaid. The Department witness testified that Appellant received both chemotherapy and radiation therapy for her cervical cancer during ██████████ and the beginning of ██████████ and that her actual treatment was completed in ██████████. The Department witness indicated that Appellant was left on BCCCP for another year for close follow-up to be sure she had no cancer recurrence. The Department witness testified that on ██████████, Appellant saw ██████████, MD for the results of an MRI and CAT scan of the abdomen and pelvis. At that time, ██████████ stated that there was no evidence of metastatic disease, Appellant was not complaining of problems that may have indicated metastatic disease and her last Pap smear/HPV test was negative. The Department witness also testified that in ██████████, Appellant again saw ██████████ who reaffirmed that she still had no evidence of recurrent cervical cancer at that time. The Department witness indicated that because Appellant had completed treatment for her cervical cancer, she no longer met the BCCCP criteria and her coverage was terminated effective ██████████. However, the Department witness also indicated that Appellant will still require surveillance Pap tests and these can still be provided through the BCCCP.

Appellant testified that she received a call from her doctor’s office a few weeks ago indicating that there was something abnormal on the pap test from ██████████. Appellant testified that her doctor’s office told her to wait and see how the hearing regarding her eligibility for the BCCCP turned out before making an appointment to see the doctor.

The Department witness responded that she did not have any information from her doctor indicating that there was anything abnormal from a previous Pap test. Appellant was instructed by the Department witness to have her doctor’s office fax in the results of the Pap test and the doctor’s note. The Department witness indicated that if Appellant did require further treatment, she would be reenrolled into the BCCCP.

Applying the facts of the case to the law, it was proper for the Department to terminate Appellant from the BCCCP. At the time the decision in this matter was made, based on the available information, Appellant was no longer receiving treatment for her cervical cancer and only required surveillance monitoring, which would not be considered cancer treatment. Furthermore, Appellant can still have her surveillance Pap tests done and provided through the BCCCP. As indicated above, if the situation has changed, Appellant can be reenrolled in the program.

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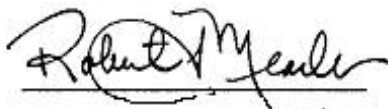
The Department submitted sufficient credible evidence that it terminated Appellant's BCCCP enrollment (with the consequential end in Medicaid coverage) in accordance with federal law and Department policy because Appellant was no longer receiving treatment for her cervical cancer. This Administrative Law Judge is also bound by federal law and Department policy. The Michigan Administrative Hearing System has no Equitable Jurisdiction and cannot order the Department to provide programs and services, including Medicaid, to an individual who is not eligible for those services.

**DECISION AND ORDER**

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's eligibility for BCCCP and Medicaid.

**IT IS THEREFORE ORDERED** that

The Department's decision is **AFFIRMED**.



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

cc:

Date Signed: October 24, 2013

Date Mailed: October 24, 2013

**\*\*\* 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.