

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909**

IN THE MATTER OF:

Docket No. 14-010992 SAS

Case No. [REDACTED]

[REDACTED]

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Appellant appeared on his own behalf. Attorney [REDACTED] appeared on behalf of [REDACTED] (CMH or Department). [REDACTED], LLP, Care Manager and [REDACTED], Fair Hearing Officer, appeared as witnesses for the Department.

ISSUE

Did the Respondent properly deny Appellant's request for outpatient methadone treatment and offer Appellant detoxification and residential 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. Appellant is a [REDACTED] year-old Medicaid beneficiary, born [REDACTED]. (Exhibit 1; Testimony)
2. CMH is an authorizing agency for substance abuse services provided under programs administered by the Department of Community Health/Community Mental Health. (Exhibits H, I; Testimony)
3. On [REDACTED], Appellant contacted CMH to request outpatient methadone treatment (OMT). During the telephone screening, Appellant indicated that he had started using IV Heroin approximately 4 months prior. Appellant reported no other use or abuse of opiates. It was explained to Appellant that state guidelines require at least 1 year of prior use before being authorized for OMT. Appellant was offered detoxification and residential and/or outpatient treatment, but he declined and indicated he would call back if he changed his mind. (Exhibit B; Testimony)

██████████
Docket No. 14-010992 SAS
Decision & Order

4. On ██████████, Appellant was sent an Action Notice indicating that he was denied OMT services due to lack of medical necessity for not meeting Michigan guidelines of at least one year of use. (Exhibit C)
5. On ██████████, Appellant again contacted CMH regarding OMT. During this screening, Appellant claimed that he had been using opiate pills since ██████ or ██████ and had begun injecting heroin about 8 months prior. Appellant also indicated during this screening that he had never had any sort of substance abuse treatment in the past. Appellant was advised that CMH would have the Medical Director review his request. (Exhibit D; Testimony)
6. On ██████████, CMH's Medical Director, Dr. ██████████, reviewed Appellant's request for OMT services and agreed that the services recommended for Appellant would be detoxification and residential services because Appellant did not meet the State guidelines for OMT services and he had never tried any other substance abuse services in the past. (Exhibit E; Testimony)
7. On ██████████, Appellant requested a local appeal. On ██████████ an independent review was done by Dr. ██████████, M.D. with ██████████. Dr. ██████████ agreed with CMH's decision to deny OMT services and that the appropriate treatment would be detoxification/residential treatment and outpatient therapy. (Exhibit F; Testimony)
8. A local appeal determination letter denying OMT services was mailed to Appellant on ██████████. (Exhibit F; Testimony)
9. Appellant's Request for Administrative Hearing was received by the Michigan Administrative Hearing System on ██████████. (Exhibit 1)

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 2012, Part II, Section 2.1.1, pp 26-27.* 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 2012, Part II, Section 2.1.1, pp 26-27.*

Medicaid-covered substance abuse services and supports, including Division of Pharmacological Therapies (DPT)/Center for Substance Abuse Treatment (CSAT) – approved pharmacological supports may be provided to eligible beneficiaries. *Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, §§ 12.1, January 1, 2014, p. 64.*

DPT/CSAT-approved pharmacological supports encompass covered services for methadone and supports and associated laboratory services. *Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, §§ 12.2, April 1, 2014, pp. 67-69.* Opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy if they meet the following eligibility requirements:

12.2.C. ELIGIBILITY CRITERIA

Medical necessity requirements shall be used to determine the need for methadone as an adjunct treatment and recovery service.

All six dimensions of the American Society of Addiction Medicine (ASAM) patient placement criteria must be addressed:

- Acute intoxication and/or withdrawal potential.
- Biomedical conditions and complications.
- Emotional/behavioral conditions and complications (e.g., psychiatric conditions, psychological or emotional/behavioral complications of known

or unknown origin, poor impulse control, changes in mental status, or transient neuropsychiatric complications).

- Treatment acceptance/resistance.
- Relapse/continued use potential.
- Recovery/living environment

12.2.D. ADMISSION CRITERIA

Decisions to admit an individual for methadone maintenance must be based on medical necessity criteria, satisfy the LOC determination using the six dimensions of the ASAM Patient Placement Criteria, and have an initial diagnostic impression of opioid dependency for at least one year based on current DSM criteria.

Admission procedures require a physical examination. This examination must include a medical assessment to confirm the current DSM diagnosis of opioid dependency of at least one year, as was identified during the screening process. The physician may refer the individual for further medical assessment as indicated.

Consistent with the LOC determination, individuals requesting methadone must be presented with all appropriate options for substance use disorder treatment, such as:

- Medical Detoxification
- Sub-acute Detoxification
- Residential Care
- Buprenorphine/Naloxone
- Non-Medication Assisted Outpatient Treatment

(Emphasis added)

The *Medicaid Provider Manual* further specifies Medical Necessity Criteria:

2.5.A. Medical Necessity Criteria

Mental health, developmental disabilities, and substance abuse services are supports, services and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. Determination Criteria

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aids) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professions with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on personal-centered planning, and for beneficiaries with substance use disorders, individuals treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.

2.5.C. Supports, Services and Treatment Authorized by the PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for the timeliness in a location that is accessible to the beneficiary; and
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and

██████████
Docket No. 14-010992 SAS
Decision & Order

- Provided in the least restrictive, most integrated setting. In patient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or supports have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP Decisions

Using criteria for medical necessity, a PIHP may:

- Deny services that are:
 - Deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
 - Experimental or investigational in nature; or
 - For which there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, fate-keeping arrangements, protocols and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis. [*Medicaid Provider Manual, Mental Health/Substance Abuse Section, April 1, 2014, pp. 12-14*].

The Department's Care Manager testified that on ██████████, Appellant again contacted CMH regarding OMT and spoke to her. The Department's Care Manager indicated that during this screening, Appellant claimed that he had been using opiate pills since ██████ or ██████ and had begun injecting heroin about 8 months prior. The Department's Care Manager also testified that Appellant indicated during this screening that he had never had any sort of substance abuse treatment in the past. The Department's Care Manager testified that she told Appellant that she would have the Medical Director review his request. The Department's Care Manager indicated that on ██████████, CMH's Medical Director, Dr. ██████████, reviewed Appellant's request for OMT services and agreed that the services recommended for Appellant would be detoxification and residential services because Appellant did not meet the State guidelines for OMT services and he had never tried any other substance abuse services in the past.

Docket No. 14-010992 SAS
Decision & Order

The Department's Fair Hearing Officer testified that on [REDACTED], Appellant requested a local appeal and on [REDACTED] an independent review was done by Dr. [REDACTED], M.D. with [REDACTED]. The Department's Fair Hearing Officer indicated that Dr. [REDACTED] agreed with CMH's decision to deny OMT services and that the appropriate treatment would be detoxification/residential treatment and outpatient therapy. The Department's Fair Hearing Officer testified that a local appeal determination letter denying OMT services was then mailed to Appellant on [REDACTED].

Appellant testified that when he first contacted CMH on [REDACTED] he was thrown off by the questions asked of him and did not answer truthfully. Appellant indicated that he was off his medications at the time and became confused during the screening. Appellant testified that he had in fact been using opiate pills for numerous years and had tried detoxification and residential treatment in Nevada in the past. Appellant testified that he is still using opiates and recently contracted Hepatitis C for which he has to go in for a liver biopsy this week. Appellant testified that he is sick every morning and is in pain. Appellant indicated that when addicts ask for help they are not in their right mind, so the CMH should be more understanding about his confusion. Appellant testified that detoxification and residential treatment would be a waste because he has tried it in the past and it has not worked.

The Department provided sufficient evidence that its decision to deny Appellant OMT services was proper and in accordance with Department policy. Here, Appellant did not meet the State guidelines for OMT services (opiate use for at least one year) and he had never tried any other substance abuse services in the past. As indicated above, medical necessity criteria requires that beneficiaries be denied services if there exists another appropriate, efficacious, less-restrictive and cost-effective service, setting or support that otherwise satisfies the standards for medically-necessary services. Here, Appellant was offered detoxification/residential treatment and outpatient therapy, but he refused those services. While Appellant now maintains that he has used opiates for more than one year, and that he has tried and failed at substance abuse treatment in the past, it is telling that Appellant failed to mention those facts until after he was informed that they were required before OMT could be authorized.

Appellant did not prove, by a preponderance of evidence that he met medical necessity criteria for OMT services. This means that the CMH properly denied Appellant's request for outpatient methadone treatment. If Appellant tries and fails at detoxification and residential treatment, he can renew his request for OMT services.

[REDACTED]
Docket No. 14-010992 SAS
Decision & Order

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Appellant's request for outpatient methadone treatment services.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

RM [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.