STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P. O. Box 30763, Lansing, MI 48909
(517) 335-3997; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 14-013584 MCE

Appellant
______________________/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq*., and upon Petitioner's request for hearing.

After due notice, a hearing was held on . Appellant appeared and testified on her own behalf. , Medical Exception and Special Disenrollment Program Specialist, appeared and testified on behalf of the Michigan Department of Community Health ("MDCH" or "Department").

ISSUE

Did the Department properly deny Appellant's request for a medical exception from mandatory Managed Care Program enrollment?

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 has been a Medicaid eligible beneficiary since . (Testimony of

2. Appellant is also in the mandatory population for enrollment in a Medicaid Health Plan and, on , the Department enrolled Appellant into one of those health plans, . (Testimony of .

3. On or about , the Department received a managed care exception request from Appellant and her nurse practitioner asking that Appellant be returned to Fee-For-Service (FFS) Medicaid. (Respondent's Exhibit A, page 6).

4. In that request, the nurse practitioner indicated that she had been treating Appellant for a variety of conditions since [redacted] Appellant has visits once a month; and the treatment will go on for an indefinite period of time. (Respondent's Exhibit A, page 6).

5. The nurse practitioner also checked "yes" in the section of the form asking her if she worked with any of the Medicaid Health Plans, but only identified "Medicaid" when asked to list the plans. (Respondent's Exhibit A, page 6).

6. On [redacted], the Department sent Appellant written notice that her request for a medical exception was denied. (Respondent's Exhibit A, pages 7-8).

7. Specifically, that denial notice stated in part:

> Your request for Medical Exception from managed care enrollment has been denied for the reason(s) listed below:
>
> > There was no information from an attending physician (M.D. or D.O.), the only information was from nurse practitioner [redacted] who listed several ongoing chronic medical conditions under standard treatment with referrals to specialists for evaluation and treatment. No other medical information was received for review from any other specialty care providers.

Respondent's Exhibit A, page 7

8. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Respondent's Exhibit A, page 5).

9. Following the receipt of the request for hearing, [redacted] the Department's Chief Medical Director, reviewed and upheld the denial of the request for medical exception. (Respondent's Exhibit A, page 9).

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 154 of 2006 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 managed care enrollment at least through the current prescribed course of treatment, subject to periodic review of continued eligibility.

Similarly, the Michigan Medicaid Provider Manual (MPM) states in the applicable part:

> **9.3 MEDICAL EXCEPTIONS TO MANDATORY ENROLLMENT**
>
> The intent of a medical exception 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 was 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 available only 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, whichever occurs first.

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 (MD or DO) 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 considering 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 a 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.

9.3.B. PROCESS FOR REQUESTING A MEDICAL EXCEPTION

The Medicaid beneficiary must initiate the review process for medical exception by completing Section I of the Medical Exception Request (form MSA-1628). Beneficiaries can obtain forms, discuss managed care options, or ask questions regarding the medical exception process by contacting MI Enrolls. (Refer to the Directory Appendix for contact information.) If the beneficiary has been enrolled in a MHP for more than two months, the medical exception request does not apply.

9.3.C. PHYSICIAN RESPONSIBILITY

The physician who is actively treating the beneficiary for the serious medical condition must complete Section II of the MSA-1628. If multiple physicians are involved, each one must complete a separate form. The physician completing the form must be actively treating the beneficiary, and must not be participating with or have any arrangement with a MHP with which the beneficiary can be enrolled. The information provided by the physician must include:

- A detailed description of the serious medical condition that is being treated, including the diagnosis and current active signs and symptoms in adequate detail to justify the degree of seriousness. Diagnosis alone is not sufficient.
- The length of time that the beneficiary has been actively treated for this condition by the physician completing the form.

- The treatment plan in place, including any planned interventions and a list of all current and anticipated medications.

- The frequency of visits.

- The anticipated length of time (in months) that the beneficiary will need this treatment.

A Medical Exception Request cannot be processed without all of the above information. MDCH will verify that the treating physician is not available in any MHP in which the beneficiary can be enrolled. If an exception to managed care enrollment is granted, the MDCH will identify a period of time, up to one year, for which it is approved. At the end of that period, the beneficiary will be eligible for enrollment in a MHP.

MPM, July 1, 2014 version
Beneficiary Eligibility Chapter, pages 43-45

Here, Appellant submitted a request for medical exception after being enrolled in a Medicaid Health Plan. Her request was subsequently denied and Appellant now challenges that decision on appeal. In doing so, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request.

Given the record in this case, Appellant has failed to meet that burden of proof and the Department's decision must be affirmed. For example, the above policy expressly requires that the "physician who is actively treating the beneficiary for the serious medical condition . . . complete Section II of the MSA-1628" while, in this case, that section of the request was submitted by a nurse practitioner.

Additionally, even if the appropriate doctor or doctors had completed the form, the record fails to demonstrate that they are providing active treatment for a serious medical condition. Instead, as found by the Department, the request merely identified a number of chronic medical conditions and the standard treatment for those conditions.

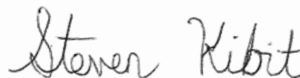
Appellant must meet all of the conditions outlined in the law to be granted an exception. She failed to do so with the request for exception in this case and, consequently, the Department's decision to deny that request must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's request for a medical exception from mandatory Managed Care Program enrollment.

IT IS THEREFORE ORDERED that:

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



Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: _

Date Mailed: _

SK/db

cc:

*** 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.