

**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. 2014-17510 BCC  
Case No. ██████████

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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on her own behalf. ██████████, Appellant's husband, appeared as a witness.

██████████, 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**

Based upon the competent, material and substantial evidence on the whole record, I find, as material fact:

1. On October 1, 2001, the federal Medicaid BCCCP Medicaid Treatment Act became effective. (Exhibit A; Testimony)
2. On ██████████, Appellant was diagnosed with triple negative invasive breast cancer. Appellant's diagnosis made her eligible for the BCCCP and she was enrolled in Medicaid. (Exhibit A; 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, App. A).
4. Appellant received chemotherapy, mastectomy, and radiation therapy as part of her treatment. Since the completion of her cancer treatment, Appellant received physical therapy as follow-up care for lymphedema of

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her right arm secondary to her mastectomy and monitoring of mild thrombocytopenia. Appellant was last seen by her provider, Lynette Sutkowi, DO on [REDACTED] [REDACTED] [REDACTED] and was informed that her thrombocytopenia was stable and that she could be seen in one year. (Exhibit A, App B, p 2; Testimony).

5. On [REDACTED], Appellant had an ultrasound guided needle biopsy of her right breast which showed a small papilloma and ductal hyperplasia. No evidence of cancer had recurred. (Exhibit A, App C, p 2; Testimony)
6. At a follow up appointment on [REDACTED], Appellant complained of continued chest wall pain. A CT of her chest was performed on [REDACTED] which showed changes consistent with post cancer treatment. No evidence of cancer recurrence was noted at that time. (Exhibit A, App D, p 2; Testimony)
7. Because Appellant had completed treatment for her cancer, she no longer met the BCCCP criteria and her coverage was terminated. Appellant and her daughter were notified of the action on [REDACTED]. Appellant was also given information about applying for county Medicaid. (Exhibit A; App E; Testimony)
8. 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.

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- 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.**

**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

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- B. by inserting “, and (XIV) the medical assistance made available to an individual described in subsection (aa) 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 on ██████████, Appellant was diagnosed with triple negative invasive breast cancer. Appellant's diagnosis made her eligible for the BCCCP and she was enrolled in Medicaid. The Department witness indicated that Appellant received chemotherapy, mastectomy, and radiation therapy as part of her treatment. Since the completion of her cancer treatment, Appellant received physical therapy as follow-up care for lymphedema of her right arm secondary to her mastectomy and monitoring of mild thrombocytopenia. Appellant was last seen by her provider, ██████████, DO on ██████████ and was informed that her thrombocytopenia was stable and that she could be seen in one year. The Department witness testified that on ██████████, Appellant had an ultrasound guided needle biopsy of her right breast which showed a small papilloma and ductal hyperplasia. No evidence of cancer had recurred. The Department witness also indicated that at a follow up appointment on ██████████, Appellant complained of continued chest wall pain. A CT of her chest was performed on ██████████ which showed changes consistent with post cancer treatment. No evidence of cancer recurrence was noted at that time. The Department witness testified that because Appellant had completed treatment for her cancer, she no longer met the BCCCP criteria and her coverage was terminated. Appellant and her daughter were notified of the action on ██████████. Appellant was also given information about applying for county Medicaid.

Appellant's husband asked that Appellant's insurance be continued. In the request for hearing, Appellant's husband indicated that Appellant wears a patch for pain and has a mediport.

The Department witness indicated in response that the mediport was inserted for chemotherapy, but Appellant is no longer receiving any treatment for cancer – she is now in surveillance mode.

Applying the facts of the case to the law, it was proper for the Department to terminate Appellant from the Breast and Cervical Cancer Control Program. Appellant is no longer receiving treatment for her breast cancer and only requires surveillance monitoring, which is not considered cancer treatment.

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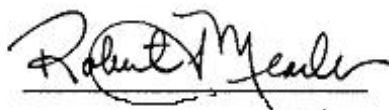
The Department submitted sufficient credible evidence that it terminated Appellant's BCCCP enrollment (with the consequential end in Medicaid coverage) in accordance with federal law and Department policy because Appellant was no longer receiving treatment for her breast cancer. This Administrative Law 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 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: February 6, 2014

Date Mailed: February 6, 2014

**\*\*\* 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

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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.