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. 2014-30403 SAS

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 the Appellant's request for a hearing.

After due notice, a hearing was held on Appellant appeared and testified on her own behalf. Appellant's boyfriend, and Appellant's boyfriend's grandmother, also testified on Appellant's behalf. Hearings Coordinator, represented the Respondent Community Mental Health Authority of , and counties (CMHA-). a counselor/therapist at the , a Director at ; , a Utilization Reviewer at CMHA- and , a Compliance Coordinator at CMHA- also testified as witnesses for Respondent.

ISSUE

Did CMHA properly deny Appellant's request for outpatient methadone treatment?

FINDINGS OF FACT

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

1. CMHA- is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the its service area.

2. Appellant is a year-old Medicaid beneficiary who has been diagnosed with opioid dependence and amphetamine abuse. (Respondent's Exhibit A, pages 22, 36).

3. In , Appellant requested outpatient methadone treatment (OMT) at , a state licensed methadone program, through CMHA (Respondent's Exhibit A, page 22; Testimony of Appellant).

4. Following that request, CMHA- l referred Appellant for a substance abuse evaluation at (Respondent's Exhibit A, page 22).

5. The evaluation was conducted on by (Respondent's Exhibit A, pages 22-30; Testimony of).

6. During the evaluation, Appellant reported that she was currently using heroin daily and had used alcohol daily in the past. (Respondent's Exhibit A, pages 22-23).

7. Appellant also reported that she has never been evaluated or treated for alcohol or drug abuse before. (Respondent's Exhibit A, page 23).

8. Appellant further reported that she has never received outpatient counseling or attended Alcoholics Anonymous/Narcotics Anonymous in the past. (Respondent's Exhibit A, page 23).

9. Appellant also stated that her boyfriend, who she lives with and is also addicted to heroin, began outpatient methadone treatment recently and it has been helping him. (Respondent's Exhibit A, page 24).

10. Following the evaluation, recommended that, rather than outpatient methadone treatment, Appellant enter into a medically managed detoxification, followed by an inpatient residential treatment program at a woman's specialty facility. (Respondent's Exhibit A, pages 31, 44).

11. Specifically, found:

> Client is seeking outpatient methadone assisted treatment at this time. However, due to the fact that client has never engaged in any formal treatment services, it is the clinical recommendation of this agency that client participate in medication assisted detox in a controlled environment followed by residential treatment in a woman's specialty treatment facility with emphasis on co-occurring recovery and trauma informed treatment. It would be beneficial to client to gain education about the

> disease of addiction as well as coping skills and recovery supports.

Respondent's Exhibit A, page 44

12. After consulting with [redacted] and CMHA-[redacted] decided to accept her recommendation, deny the request for outpatient methadone treatment, and approve a medically managed detoxification followed by an inpatient residential treatment program. (Respondent's Exhibit A, pages 31, 44; Testimony of [redacted].

13. Appellant declined those approved services. (Testimony of Appellant).

14. On [redacted] the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Petitioner's Exhibit 1, page 1; Respondent's Exhibit A, page 50).

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 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 with the 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. 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).

Among the services that CMHA-[redacted] can authorize are substance abuse services, such as outpatient methadone assistance, and, with respect to such services, the applicable version of the MPM states:

> **SECTION 12 – SUBSTANCE ABUSE SERVICES**
>
> **12.1 COVERED SERVICES - OUTPATIENT CARE**
>
> Medicaid-covered services and supports must be provided, based on medical necessity, to eligible beneficiaries who reside in the specified region and request services.
>
> Outpatient treatment is a non-residential treatment service that can take place in an office-based location with clinicians educated/trained in providing professionally directed alcohol and other drug (AOD) treatment or a community-based location with appropriately educated/trained staff. The treatment occurs in regularly scheduled sessions, usually totaling fewer than nine contact hours per week but, when medically necessary, can total over 20 hours in a week. Individual, family or group treatment services may be provided individually or in combination.
>
> Treatment must be individualized based on a bio-psycho-social assessment, diagnostic impression and beneficiary characteristics, including age, gender, culture, and development. Authorized decisions on length of stay, including continued stay, change in level of care, and discharge, must be based on the American Society of Addiction Medicine (ASAM) Patient Placement Criteria. Beneficiary participation in referral and continuing care planning must occur prior to discharge and should be based

on the needs of the beneficiary in order to support sustained recovery.

12.1.A. ELIGIBILITY

Outpatient care may be provided only when:

- The service meets medical necessity criteria.

- The current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) is used to determine an initial diagnostic impression (also known as provisional diagnosis). The diagnostic impression must include all five axes.

- The service is based on individualized determination of need.

- The service is cost effective.

- The American Society of Addiction Medicine (ASAM) Patient Placement Criteria are used to determine substance abuse treatment placement/admission and/or continued stay needs.

- The service is based on a level of care determination using the six assessment dimensions of the current ASAM Patient Placement Criteria:

  - Withdrawal potential

  - Medical conditions and complications

  - Emotional, behavioral or cognitive conditions and complications

  - Readiness to change

- Relapse, continued use or continued problem potential

- Recovery/living environment.

This service is limited to those beneficiaries who will benefit from treatment and have been determined to have:

- an acceptable readiness to change level;

- minimal or manageable medical conditions;

- minimal or manageable withdrawal risks;

- emotional, behavioral and cognitive conditions that will not prevent the beneficiary benefiting from this level of care;

- minimal or manageable relapse potential; and

- a minimally to fully supportive recovery environment.

12.1.B. COVERED SERVICES

Once the above criteria have been satisfied and the beneficiary has demonstrated a willingness to participate in treatment, the following services can be provided in the outpatient setting:

* * *

Division of Pharmacologic Therapies/Center for Substance Abuse Treatment (DPT/CSAT) Approved Pharmacological Supports

Refer to the Treatment (DPT/CSAT) Approved Pharmacological Supports subsection.

* * *

12.2 TREATMENT (DPT/CSAT) APPROVED PHARMACOLOGICAL SUPPORTS

12.2.A. PROVISION OF SERVICES

Opiate-dependent beneficiaries may be provided chemotherapy using methadone as an adjunct to a treatment service. Provision of such services must meet the following criteria:

- Services must be provided under the supervision of a physician licensed to practice medicine in Michigan.

- The physician must be licensed to prescribe controlled substances, as well as licensed to work at a methadone program.

- The methadone component of the substance abuse treatment program must be:

  - licensed as such by the state;

  - certified by the Division of Pharmacologic Therapies/Center for Substance Abuse Treatment (DPT/CSAT);

  - licensed by the Drug Enforcement Administration (DEA); and

  - accredited by a DPT/CSAT and state-approved accrediting organization (The Joint Commission (TJC) and the Commission on Accreditation of Rehabilitation Facilities (CARF)).

- Methadone must be administered by an appropriately-licensed MD/DO, physician's assistant, nurse practitioner, registered nurse, licensed practical nurse, or pharmacist.

12.2.B. COVERED SERVICES

Covered services for Methadone and pharmacological supports and laboratory services, as required by DPT/CSAT regulations and the Administrative Rules for Substance Use Disorder Service Programs in Michigan, include:

- Methadone medication
- Nursing services
- Physical examination
- Physician encounters (monthly)
- Laboratory tests (including health screening tests as part of the initial physical exam, pregnancy test at admission, and required toxicology tests)
- TB skin test (as ordered by physician)

12.2.C. ELIGIBILITY CRITERIA

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

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

* * *

12.2.E. MEDICAL MAINTENANCE PHASE

When the maximum therapeutic benefit of counseling has been achieved, it may be appropriate for the individual to enter the medical maintenance (methadone only) phase of treatment and recovery; that is if it has been determined that ongoing use of the medication is medically necessary and appropriate for the individual. The following criteria are to be considered when making the decision to move to medical maintenance:

- Two years of continuous treatment.
- Abstinence from illicit drugs and from abuse of prescription drugs for the period indicated by federal and state regulations (at least two years for a full 30-day maintenance dosage).
- No alcohol use problem.
- Stable living conditions in an environment free of substance use.
- Stable and legal source of income.
- Involvement in productive activities (e.g., employment, school, volunteer work).
- No criminal or legal involvement for at least three years and no current parole or probation status.
- Adequate social support system and absence of significant non-stabilized co-occurring disorders.

* * *

12.3 EXCLUDED SERVICES

- Room and board;

- All other services not addressed within Covered or Allowable Services; and

- Medicaid Substance Abuse Services funded Outside the PIHP Plan.

Some Medicaid-covered services are available to substance abuse beneficiaries, but are provided outside of the PIHP Plan. The PIHPs are not responsible to pay for the following:

- Acute detoxification.

- Laboratory services related to substance abuse (with the exception of lab services required for Methadone and LAAM).

- Medications used in the treatment/management of addictive disorders.

- Emergency medical care.

- Emergency transportation.

- Substance abuse prevention and treatment that occurs routinely in the context of providing primary health care.

- Routine transportation to substance abuse treatment services which is the responsibility of the local DHS.

MPM, January 1, 2014 version
Mental Health/Substance Abuse Chapter, pages 64-73
(Underline added by ALJ)

However, as discussed in the above policy, while outpatient methadone treatment is a Medicaid covered services, Medicaid beneficiaries are still only entitled to medically necessary covered services for which they are eligible and services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. *See* 42 CFR 440.230. Regarding medical necessity, the applicable version of the MPM states:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid

mental health, developmental disabilities, and substance abuse supports and services.

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/aides) who know the beneficiary;

- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;

- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;

- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;

- Made within federal and state standards for timeliness;

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and

- Documented in the individual plan of service.

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 timeliness in a location that is accessible to the beneficiary;

- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;

- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;

- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support 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;

  - that are 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, gate-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.

MPM, January 1, 2014 version
Mental Health/Substance Abuse Chapter, pages 12-14

Here, Appellant requested outpatient methadone treatment at [redacted] a state licensed methadone program, through CMHA-[redacted] but her request was denied and CMHA-[redacted] instead offered a medically managed detoxification followed by an inpatient residential treatment program. Appellant then refused the offered services.

According to CMHA-[redacted] witnesses, that decision was based on the findings of the therapist/evaluator that outpatient methadone treatment would likely be unsuccessful at this time and was therefore not medically necessary. [redacted] also specifically testified that, if Appellant's was approved, CMHA-[redacted] would be setting Appellant up to fail. In particular, [redacted] noted that Appellant has never engaged in any formal treatment for substance abuse or addiction, and that it would be beneficial for Appellant to first gain education about the disease of addiction, in addition to coping skills and recovery supports. If and when Appellant completed the detoxification and inpatient residential treatment program, she would then be reevaluated for outpatient methadone treatment.

In response, Appellant testified that she cannot go into a residential program at this time because she is caring for her daughter and trying to find a job. She also testified that, while the inpatient residential treatment program could address her child care needs, she does not want to go into such a program with her daughter. Appellant further testified that she wants the same type of services her boyfriend is receiving and that he will provide her with both a ride to and support with the methadone treatment. Appellant also noted that the outpatient methadone treatment can involve more than just the methadone itself and that she knows it is the only thing that will work for her.

Appellant bears the burden of proving by a preponderance of the evidence that the CMHA-[redacted] erred and that outpatient methadone treatment is a medical necessity in accordance with the Code of Federal Regulations.

Given the above evidence and policies, Appellant did not meet that burden of proof. Policy requires that decisions to admit an individual for outpatient methadone treatment

must be based on medical necessity criteria and that the determination of what services are medically necessary should be made by appropriately trained substance abuse professionals with sufficient clinical experience. In this case, CMHA I's decisions were based on the professional judgment of its witnesses that the specific services requested by Appellant would be not successful at this time and are therefore not medically necessary. The above policy regarding medical necessary services does provide that medically necessary services must be sufficient in amount, scope and duration to reasonably achieve their purpose and, here, the information those witnesses based their recommendation on, such as the fact that Appellant has never had any formal treatment or training with respect to substance abuse or addition, is undisputed. That undisputed information also supports CMHA- determination that outpatient methadone treatment at this point would not be reasonably likely to achieve its goals.

Additionally, while Appellant may disagree with the recommendations made by the substance abuse professionals, her reasons for doing so are insufficient. Appellant's logistical concerns, such as caring for her daughter while in treatment, were addressed by CMHA- and the fact that her boyfriend is already in the methadone treatment program, the services have been helping him, and he could provide her with transportation/support, fails to establish medical necessity. Appellant's needs must be determined individually and, while it may be easier or more convenient for Appellant to only have outpatient services, that does not make them necessary or appropriate at this time. Similarly, the fact that Appellant only wants a certain type of treatment does not make it necessary or appropriate at this time.

Accordingly, given the above evidence and policies, the undersigned Administrative Law Judge finds that Appellant has failed to meet her burden of proving by a preponderance of the evidence that outpatient methadone treatment is medically necessary in this case and CMHA s decision to only offer other services is affirmed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

CMHA- decision is **AFFIRMED**.

Steven Kibit

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

Date Signed: __[redacted]_

Date Mailed: _[redacted]_

SK/db

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.