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. 14–016635 SAS

[redacted]

Appellant
_____/

DECISION AND ORDER

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

After due notice, a hearing was held on [redacted]. Appellant appeared and testified on his own behalf.

[redacted], MPA, Fair Hearings Officer for the Community Mental Health Authority for [redacted] Counties, (CMH), appeared and testified on behalf of CMH. [redacted] Clinical Supervisor, [redacted], also testified on behalf of CMH.

ISSUE

Did the Respondent properly terminate Appellant's 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. Appellant is a [redacted]-year-old male (DOB [redacted]) and Medicaid beneficiary. (Testimony).

2. On [redacted], Appellant was admitted to [redacted]) and was receiving methadone dosing and individual counseling through CMH. Appellant signed an acknowledgment indicating he would attend counseling, dosing and not use illicit substances during his treatment. (Exhibit A, pp. 1, 32-33, 36-37 and testimony).

3. [redacted] documented Appellant's repeated violations of its program policy for many months, primarily his illicit use of marijuana/THC. (Exhibit A, pp. 35, 38, 40-49 and testimony).

4. On [redacted], Appellant was placed on a [redacted]-day behavioral contract. (Exhibit A, pp. 39, 46 and testimony).

5. On [redacted] provided Appellant with a Notice of Action stating that his methadone assisted treatment would be terminated effective [redacted] due to continued noncompliance with the behavioral standards for [redacted] due to ongoing illicit drug use. (Exhibit A, pp. 28-29, 40-42 and testimony).

6. On [redacted], Appellant filed a Request for Administrative Hearing with the Michigan Administrative Hearing System for the Department of Community Health on. (Exhibit A, p. 30).

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, October 1, 2014, pp. 70-71.*

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, October 1, 2014, pp. 73-79.* Opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy.

Discontinuance/Termination of Treatment is governed by *Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, §§ 12.2.2.F,* October 1, 2014, pp. 76-77, which provides:

> **12.2.F. DISCONTINUATION/TERMINATION CRITERIA**
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> Discontinuation/termination from methadone treatment refers to the following situations:
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> - Beneficiaries must discontinue treatment with methadone when treatment is completed with respect to both the medical necessity for the medication and for counseling services.
> - Beneficiaries may be terminated from services if there is clinical and/or behavioral noncompliance.
> - If a beneficiary is terminated,:
>
> - The OTP must attempt to make a referral for another LOC assessment or for placing the beneficiary at another OTP.
> - The OTP must make an effort to ensure that the beneficiary follows through with the referral.
> - These efforts must be documented in the medical record.
> - The OTP must follow the procedures of the funding authority in coordinating these referrals.

- Any action to terminate treatment of a Medicaid beneficiary requires a "notice of action" be given to the beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS). The beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS) has a right to appeal this decision, and services must continue and dosage levels maintained while the appeal is in process; unless the action is being carried out due to administrative discontinuance criteria outlined in the subsection titled Administrative Discontinuation.

Services are discontinued/terminated either by Completion of Treatment or through Administrative Discontinuation. Refer to the following subsections for additional information.

Administrative Discontinuance of Treatment is governed by *MPM, Mental Health/Substance Abuse Chapter, §§ 12.2.F.2,* October 1, 2014, p 77-79, which provides:

12.2.F.2. ADMINISTRATIVE DISCONTINUATION

Administrative discontinuation relates to non-compliance with treatment and recovery recommendations, and/or engaging in activities or behaviors that impact the safety of the OTP environment or other individuals who are receiving treatment. The OTP must work with the beneficiary and the parent, legal guardian, or responsible adult (designated by the relevant state authority/CPS) to explore and implement methods to facilitate compliance.

Non-compliance is defined as actions exhibited by the beneficiary which include, but are not limited to:

- The repeated or continued use of illicit opioids and non-opioid drugs (including alcohol).
- Toxicology results that do not indicate the presence of methadone metabolites. (The same actions are taken as if illicit drugs, including non-prescribed medication, were detected.)

In both of the aforementioned circumstances, OTPs must perform toxicology tests for methadone metabolites, opioids, cannabinoids, benzodiazepines, cocaine, amphetamines, and barbiturates (Administrative Rules for Substance Use Disorder Service Programs in Michigan, R 325.14406).

OTPs must test the beneficiary for alcohol if use is prohibited under their individualized treatment and recovery plan or the beneficiary appears to be using alcohol to a degree that would make dosing unsafe.

- Repeated failure to submit to toxicology sampling as requested.
- Repeated failure to attend scheduled individual and/or group counseling sessions, or other clinical activities such as psychiatric or psychological appointments.
- Failure to manage medical concerns/conditions, including adherence to physician treatment and recovery services and use of prescription medications that may interfere with the effectiveness of methadone and may present a physical risk to the individual.
- Repeated failure to follow through on other treatment and recovery plan related referrals. (Repeated failure should be considered on an individual basis and only after the OTP has taken steps to assist beneficiaries to comply with activities.)

The commission of acts by the beneficiary that jeopardize the safety and well-being of staff and/or other individuals, or negatively impact the therapeutic environment, is not acceptable and can result in immediate discharge. Such acts include, but are not limited to, the following:

- Possession of a weapon on OTP property.
- Assaultive behavior against staff and/or other individuals.
- Threats (verbal or physical) against staff and/or other individuals.
- Diversion of controlled substances, including methadone.
- Diversion and/or adulteration of toxicology samples.
- Possession of a controlled substance with intent to use and/or sell on agency property or within a one-block radius of the clinic.
- Sexual harassment of staff and/or other individuals.
- Loitering on the clinic property or within a one-block radius of the clinic.

Administrative discontinuation of services can be carried out by two methods:

- **Immediate Termination** - This involves the discontinuation of services at the time of one of the above safety-related incidents or at the time an incident is brought to the attention of the OTP.
- **Enhanced Tapering Discontinuation** - This involves an accelerated decrease of the methadone dose (usually by 10 mg or 10 percent a day). The manner in which methadone is discontinued is at the discretion of the OTP physician to ensure the safety and well-being of the beneficiary.

It may be necessary for the OTP to refer beneficiaries who are being administratively discharged to the local access management system for evaluation for another level of care. Justification for non-compliance termination must be documented in the beneficiary's chart.

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
- 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,* October 1, 2014, pp. 12-14].

The evidence in this case demonstrates that administrative discontinuance of Appellant's methadone treatment was carried out because the Appellant engaged in the repeated and continued illicit use of marijuana/THC.

The Respondent's witness [redacted] Clinical Supervisor, [redacted], established that the Appellant had been receiving Medicaid covered services through CMH at the [redacted] that included methadone dosing and individual counseling services. [redacted]t stated, however, that the Appellant continued to test positive for illicit drug use, the use of marijuana/THC.

[redacted] stated the Appellant had positive drug screens for marijuana on [redacted] of his last 15 Urine Drug Screens (UDSs). Ms. Ehart stated the Appellant was also placed on a [redacted] day behavioral contract for his illicit use on [redacted] stated the Appellant did not comply with the [redacted] contract by continuing to have positive UDSs, so [redacted] provided Appellant with a Notice of Action stating that his methadone assisted treatment would be terminated effective [redacted] due to continued noncompliance with the behavioral standards for [redacted] due to ongoing illicit drug use.

During his testimony, the Appellant indicated he was advised by his counselor that it wouldn't help him if he obtained a medical marijuana card. Appellant said he believes his counselor may have only warned him once of the consequences of continuing to use marijuana. Appellant said he has major anxiety. He said there is a strong history of illicit drug use in his family, and that his mother, his friend, and his friend's mother all died from drug use. Appellant said the continued use of marijuana will not kill him, but returning to heroin use will. Appellant said he only received [redacted] minutes of counseling per month and that is not enough to help him quit marijuana. Appellant said he hasn't committed a crime and hasn't gone to a drug dealer in [redacted] years. Appellant said he wants the funding for his methadone treatment to continue, and doesn't understand why they want to stop his treatment just for continued marijuana use.

The evidence of record establishes that the Department's agent issued a proper notice of termination. The Respondent provided sufficient evidence that its decision to terminate Appellant from OMT was proper and in accordance with Department policy. It is clear from the testimony of the Department's witnesses and the supporting documentation that the Appellant engaged in continued noncompliance with the behavioral standards for the [redacted] where he was receiving methadone treatment. The Department's agent documented violations of the policy contained in the Medicaid Provider Manual, and the policies of the [redacted]

The testimony of the witnesses showed the Appellant repeatedly tested positive for the illicit use of marijuana/THC during his treatment. This constitutes a clear violation of the policy contained in the Medicaid Provider Manual, and supports the decision for administrative discontinuance of Appellant's methadone treatment.

Appellant has failed to prove by a preponderance of evidence that he complied with the requirements of his outpatient methadone treatment program. Accordingly, [redacted] and the CMH acted properly to terminate the Appellant's outpatient methadone treatment.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

Respondent's decision is **AFFIRMED**.

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

WDB/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 & 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.