

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 15-006541 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 Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Fair Hearings Officer, represented the Respondent Community Mental Health Authority of ██████████, and ██████████ Counties (CMHA-██████████). ██████████, Head Counselor at ██████████ also testified as a witness for Respondent.

ISSUE

Did CMHA-██████████ 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. CMHA-██████████ is under contract with the Michigan Department of Health and Human Services (DHHS) to provide Medicaid covered services to people who reside in the its service area.
2. In turn, CMHA-██████████ also contracts with ██████████ to provide outpatient methadone treatment for enrollees.
3. Appellant began receiving outpatient methadone treatment through the CMHA-██████████ and ██████████ on or about ██████████ (Exhibit A, page 3).
4. As part of that treatment, Appellant was required to refrain from using illicit drugs and to undergo drug testing. (Exhibit A, pages 33-34; Testimony of Appellant; Testimony of ██████████).

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5. Appellant repeatedly tested positive for illicit drugs between [REDACTED] and [REDACTED] (Respondent's Exhibit A, page 37; Testimony of Appellant).
6. On [REDACTED], Appellant had a meeting with his counselor and, during that meeting; Appellant admitted to using illicit drugs and was placed on a [REDACTED]-day behavioral contract. (Exhibit A, pages 44, 46, 57).
7. In that contract, Appellant agreed to discontinue his use of illicit drugs and was warned that failure to do so could result in a termination of his services. (Respondent's Exhibit A, page 46).
8. Appellant continued to repeatedly test positive for illicit drugs between [REDACTED] and [REDACTED] (Respondent's Exhibit A, page 37; Testimony of Appellant).
9. On [REDACTED], Appellant was placed on another [REDACTED]-day behavioral contract. (Exhibit A, page 37; Testimony of Appellant).
10. Appellant continued to repeatedly test positive for illicit drugs between [REDACTED] and [REDACTED]. (Exhibit A, pages 37-38; Testimony of Appellant).
11. On [REDACTED], CMHA-[REDACTED] provided Appellant with written notice that, effective [REDACTED] his outpatient methadone treatment was being terminated. (Exhibit A, pages 25-26).
12. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Exhibit A, page 27).

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 statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program:

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each

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State decides eligible groups, types and range of services, Payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

Additionally, 42 CFR 430.10 states:

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

42 CFR 430.10

Section 1915(b) of the Social Security Act also provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection(s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

42 USC 1396n(b)

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Health and Human Services (DHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver.

Among the services that can be provided pursuant to that waiver and state plan are substance abuse rehabilitative services, including outpatient methadone treatment. See Medicaid Provider Manual (MPM), April 1, 2015 version, Mental Health/Substance Abuse Chapter, pages 70-81.

Regarding the discontinuation or termination of such outpatient methadone treatment, the MPM also states in part:

12.2.F. DISCONTINUATION/TERMINATION CRITERIA

Discontinuation/termination from methadone treatment refers to the following situations:

- 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 [Opioid Treatment Program (“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. Services must continue and dosage levels maintained while the appeal is in process, unless the action is being carried out due to administrative discontinuation 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.

* * *

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.

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- 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.

*MPM, April 1, 2015 version
Mental Health/Substance Abuse Chapter, pages 76-79
(Emphasis added)*

The evidence in this case demonstrates that administrative discontinuance of Appellant's outpatient methadone treatment was properly carried out pursuant to the above policy and because the Appellant engaged in the repeated and continued use illicit drugs.

Respondent's witness established that Appellant was receiving outpatient methadone treatment through the CMHA ██████ I at ██████ I and that he repeatedly failed to comply with the treatment program by using illicit drugs, even after been warned on several occasions that his services could be terminated and signing behavioral contracts indicating that he would stop.

Appellant does not dispute the Respondent's evidence. Instead, Appellant testified that, while he did engage in repeated and continued illicit drug use, removing his funding will only make his drug use worse and his recovery harder.

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However, given the undisputed evidence in this case, Appellant has failed to prove by a preponderance of evidence that he complied with the requirements of his outpatient methadone treatment program or that Respondent erred in deciding to terminate his services. Accordingly, CMHA ██████'s decision must be affirmed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Steven Kibit

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

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.