



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
MAHS Docket No.: 16-003005  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE: Steven Kibit**

**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 a hearing.

After due notice, a telephone hearing was held on [REDACTED]. Petitioner appeared and testified on his own behalf. [REDACTED] [REDACTED], Medical Exception and Special Disenrollment Program Specialist, appeared and testified on behalf of the Respondent Department of Health and Human Services ("Department").

**ISSUE**

Did the Department properly deny Petitioner'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. Petitioner has been a Medicaid eligible beneficiary since [REDACTED]. (Testimony of Department's representative).
2. Petitioner is also in the mandatory population to enroll in a Medicaid Health Plan (MHP), but he was previously approved for an exception from mandatory enrollment for the time period of [REDACTED] through [REDACTED]. (Testimony of Petitioner; Testimony of Department's representative).
3. On [REDACTED], the Department received a managed care exception

request from Petitioner and a [REDACTED]. (Exhibit A, pages 7-8).

4. In that request, Petitioner wrote that he injured his back in [REDACTED]; his current doctor has been in the loop since the beginning and knows his condition and pain medications; and that switching to a new doctor would affect his future care. (Exhibit A, pages 7-8).
5. [REDACTED] also wrote that she has been treating Petitioner for many years and is familiar with his entire medical history, including the medications he takes for chronic pain issues, and that changing doctors at this time could complicate his recovery. (Exhibit A, page 7).
6. The doctor further indicated that she sees Petitioner monthly or as needed; she last saw him on [REDACTED]; and that she does not work with any MHPs. (Exhibit A, page 7).
7. On [REDACTED], the Department sent Petitioner written notice that his request for a medical exception was denied. (Exhibit A, pages 11-12).
8. Specifically, that denial notice stated in part:

Your request for a Medical Exception from managed care enrollment has been denied for the reason(s) listed below:

The information from your doctor described the standard treatment of ongoing chronic medical conditions, it did not describe the treatment of a serious medical condition that would allow for a time limited medical exception. There is no indication that you have had any recent surgery, nor is there any indication in the documentation that you are scheduled for an upcoming surgery. The health plans have primary care providers and specialists, including pain management and neurosurgeons, available to treat you within their network of contracted providers.

*Exhibit A, page 11*

9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner in this matter regarding the denial of his medical exception request. (Exhibit A, page 6).

10. 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. (Exhibit A, page 13).

### **CONCLUSIONS OF LAW**

The Medical Assistance Program (MA) 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 131 of 2009 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

<p><b>Serious Medical Condition</b></p>	<p>Grave, complex, or life threatening.</p> <p>Manifests symptoms needing timely intervention to prevent complications or permanent impairment.</p> <p>An acute exacerbation of a chronic condition may be considered serious for the purpose of medical exception.</p>
<p><b>Chronic Medical Condition</b></p>	<p>Relatively stable.</p> <p>Requires long term management.</p>

	<p>Carries little immediate risk to health.</p> <p>Fluctuates over time, but responds to well-known standard medical treatment protocols.</p>
<b>Active Treatment</b>	<p>Active treatment is reviewed in regards to intensity of services when:</p> <ul style="list-style-type: none"> <li>▪ The beneficiary is seen regularly, (e.g., monthly or more frequently), and</li> <li>▪ The condition requires timely and ongoing assessment because of the severity of symptoms and/or the treatment.</li> </ul>
<b>Attending/Treating Physician</b>	<p>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.</p>
<b>MHP Participating Physician</b>	<p>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</p>

	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.
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### **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, January 1, 2016 version  
Beneficiary Eligibility Chapter, pages 44-46*

Here, the Department denied Petitioner's request for a medical exception pursuant to the above policy. In support of that decision, the Department's witness testified that the submitted documentation failed to reflect the required treatment of a serious medical condition that would allow for a time limited medical exception and, instead, only showed standard treatment of an ongoing chronic medical conditions.

In response, Petitioner testified that he was previously approved for an exception the year before and that nothing has changed at all. According to Petitioner, if anything, his back and pain issues have gotten worse and any change in doctors would only complicate his recovery given that it has already taken years for him to get the right medications at the right amount. Petitioner also testified that he and his doctor are planning on Petitioner having another surgery, but that the timing of that surgery depends on when Petitioner resolves a lawsuit he is currently involved in regarding his back. Petitioner further testified that he will be going on Medicare soon and will just be switching back to his doctor anyway, and that he only needs the exception for a limited period of time.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying his request. Moreover, in reviewing the Department's decision, the undersigned Administrative Law Judge is limited to reviewing the decision in light of the information the Department has at the time the decision was made.

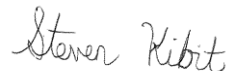
Given the available information and record in this case, Petitioner has failed to meet his burden of proof and the Department's decision must be affirmed. While it is undisputed that Petitioner has significant back pain, the submitted request fails to demonstrate that is a serious medical condition that requires active treatment. The request merely states that Petitioner's doctor is treating his chronic back pain and, while Petitioner's current doctor may be familiar with that chronic condition, there is no suggestion that she is proving anything other than long term management and well-known standard medical treatment protocols. Moreover, the mere fact that Petitioner was approved for an exception before does not warrant another exception given that each request is reviewed on its own and any approval was only meant to be available on a time-limited basis. Additionally, to the extent Petitioner claims that he has a surgery planned and that the surgery justifies another exception, his argument must be rejected as the documentation fails to reflect any such planned surgery and, instead, the doctor merely identified continuing pain management of Petitioner's chronic medical condition.

### **DECISION AND ORDER**

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

**IT IS, THEREFORE, ORDERED** that:

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



SK/db

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

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.



A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]