



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 17, 2016
MAHS Docket No.: 16-005578
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. The Petitioner appeared on her own behalf. [REDACTED], [REDACTED] Fair Hearings Officer, appeared on behalf of the Department. [REDACTED], Regional Director, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did Respondent properly administratively discharge the Appellant from receiving methadone treatment and therapy?

FINDINGS OF FACT

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

1. The Department 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. (Exhibit A; Testimony).
2. On [REDACTED], the Petitioner entered into a treatment agreement with the Department. On this date, the Petitioner initialed and signed the Department's clinical services acknowledgment. (Exhibit A, pp. 36-38;

Testimony).

3. The clinical services acknowledgment indicates individuals may be discharged for using threatening, violent, or profane language. (Exhibit A, p. 37; Testimony).
4. Petitioner's treatment included counseling services and methadone treatment. (Testimony).
5. On [REDACTED], the Petitioner visited the Department. During the visit, the Petitioner stated to a Department employee that she was tired of being picked on and that it was some "racist bullshit" that she was asked to use headphones or turn down the sound on her phone. The Petitioner was asked if she wanted to go in the back to discuss her issue. The Petitioner responded with more yelling. The Petitioner received a behavioral warning notice as a result of the incident. (Exhibit A, p 39).
6. [REDACTED], the Petitioner visited the Department and engaged in a verbal conflict with other Department staff and clients. During the conflict, the Petitioner yelled obscenities. (Exhibit A, p 41; Testimony).
7. On [REDACTED], the Petitioner visited the Department to receive a methadone dosing. During the visit, Department staff attempted to address some of the Petitioner's concerns from [REDACTED]. The Petitioner became agitated and began yelling and using obscenities before throwing her dosing cup at a window in front of a Department staff member. The Petitioner received a behavioral warning notice as a result of the incident. (Exhibit A, p 42).
8. On [REDACTED], Department staff met with the Petitioner to discuss transfer options as a result of the Petitioner making verbal threats on [REDACTED]. During the conversation, the Petitioner became upset and began yelling. The Petitioner indicated she did not threaten anyone and that she was "going to sue" until "every bitch in [there] loses their jobs".
9. On [REDACTED], Department staff indicated they were unable to transfer the Petitioner to Red Cedar and that if they were unable to transfer her to another facility she would be given a detox order for her behavior issues, threatening staff members and making other clients feel intimidated. The Petitioner became loud and irate before storming out of the office and saying "fuck this place". (Exhibit A, p 43).
10. On [REDACTED], the Department issued the Petitioner an Adequate Action Notice. The notice indicated outpatient counseling and methadone maintenance services would not be authorized effective [REDACTED] based upon a clinical assessment that indicted that a higher level of care

was needed prior to the utilization of opiate treatment from the Department. Specifically that inpatient residential care was more appropriate. Petitioner was placed on a methadone taper. (Exhibit A, pp 28-29).

11. On [REDACTED], the Michigan Administrative Hearings System (MAHS) received the Petitioner's request for hearing. (Exhibit A, p 30).

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 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.

- 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 Petitioner's methadone treatment and counseling was properly carried out pursuant to the above policy as the Petitioner engaged in making threats towards Department staff.

The Petitioner argued that she never threatened anyone. To corroborate this statement, the Petitioner presented a witness that was present on at least one occasion. The Petitioner's witness could not identify the date of her observations or identify who all was present. As a result, there is no way to determine on which date the witness made her observation. Additionally, the fact the witness was present on one occasion does not confirm that the Petitioner did not make threatening remarks on any other date.

As a result, based upon the evidence presented, the Petitioner has failed to prove by a preponderance of evidence that she complied with the requirements of her methadone treatment program or that Department erred in deciding to terminate the Petitioner's services. Accordingly, Department'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 Department properly terminated the Petitioner's methadone treatment.

IT IS THEREFORE ORDERED that:

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

CA ■



Corey Arendt
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

DHHS -Dept Contact

[REDACTED]

DHHS Department Rep.

[REDACTED]

Petitioner

[REDACTED]