



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: July 21, 2016
MAHS Docket No.: 16-007031
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 July 20, 2016. [REDACTED] appeared on behalf of the Petitioner. Attorney, [REDACTED], appeared on behalf of the Department. [REDACTED] and [REDACTED] appeared as witnesses for the Department.

Exhibits:

| | |
|------------|-------|
| Petitioner | None |
| Department | A - J |

ISSUE

Did the Department properly administratively discharge the Petitioner 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 its service area. (Exhibits A, C, H, I, J).
2. As of October 5, 2015, the Petitioner was receiving methadone treatment and therapy from the Department. (Exhibit B; Testimony).

3. Between October 5, 2015 and February 3, 2016, and while in treatment, Petitioner tested positive for opiates, cocaine or both on at least 9 different occasions. (Exhibit A, B, C; Testimony).
4. On February 3, 2016, the Petitioner signed a Medication Adherence Monitoring Program Letter of Understanding. The letter indicated the Petitioner would be monitored for a period of 90 days for his continued use of opiates and cocaine. The letter further indicated the Petitioner must test negative for all substances during the 90 day period or it would likely result in a denial of any further authorization for OMT services. (Exhibit B; Testimony).
5. Between February 9, 2016 and May 13, 2016, and while in treatment, Petitioner tested positive for opiates, cocaine or both on at least 8 different occasions. (Exhibit A, B, C; Testimony).
6. On May 13, 2016, the Department provided the Petitioner with a notice of OMT funding termination taper and administrative discharge. The notice indicated the Petitioner was being administratively discharged from the program due to toxicology reports demonstrating repeated or continued use of illicit opioids and non-opioid drugs. The taper was to begin May 23, 2016 with a final methadone dose to be administered on August 21, 2016. (Exhibits A, D; Testimony).
7. On June 2, 2016, the Michigan Administrative Hearings System (MAHS), received the Petitioner's request for hearing. (Exhibit A).

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 continued to use illicit opioids and non-opioid drugs.

The Petitioner argued his use of opiates and cocaine was tapering off and that he was making progress in the program. However, the evidence presented did not corroborate these arguments. The Petitioner continued to repeatedly test positive for opiates and cocaine and from the evidence presented, there appeared to be very little if any progress in providing clean urine screens.

As a result, based upon the evidence presented, the Petitioner has failed to prove by a preponderance of evidence that he complied with the requirements of his methadone treatment program or that Department erred in deciding to terminate the Petitioner's services. The Department has shown a continued abuse of opiates and non-opioid drugs. 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 Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]