



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 20, 2016
MAHS Docket No.: 16-007136
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon Petitioner's request for a hearing.

After due notice, a hearing was held on July 20, 2016. [REDACTED], Petitioner's mother, appeared and testified on Petitioner's behalf. [REDACTED], Medicaid Exception Specialist, appeared and testified on behalf of the Respondent, Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did the Department properly deny Petitioner's request for exception from 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 is a [REDACTED] year-old Medicaid beneficiary, born [REDACTED]. (Exhibit A, p 7; Testimony)

2. Petitioner has been enrolled in Medicaid since [REDACTED] and has dual coverage under the Children's Special Health Care Services (CSHCS). Petitioner resides in [REDACTED], a mandatory population to enroll in a Medicaid Health Plan, and has been enrolled in [REDACTED] since [REDACTED]. (Exhibit A, p 1; Testimony)
3. On [REDACTED] and [REDACTED] the Department received Petitioner's Medical Exception request and supporting medical documentation. A Department physician reviewed the request. (Exhibit A, pp 16-18; Testimony).
4. On [REDACTED], Petitioner's request for a managed care exception was denied because the Department determined that Petitioner had been enrolled in a Medicaid Health Plan for more than 2 months, the medical information provided with the request was from a doctor who works for a Medicaid Health Plan available to Petitioner, and the frequency of visits for one doctor did not meet the activity of treatment criteria for an exception. (Exhibit A, pp 20-21; Testimony).
5. On [REDACTED], the Michigan Administrative Hearing System received Petitioner's Request for an Administrative Hearing. (Exhibit 1; Testimony).
6. On [REDACTED], in preparation for the hearing, Petitioner's request for a managed care exception was also reviewed by the Department's Chief Medical Director. The Director concurred that Petitioner's request was properly denied. (Exhibit A, p 22; Testimony).

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 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 154 of 2006 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.

With regard to medical exceptions, the Medicaid Provider Manual provides, in relevant 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

Serious Medical Condition

Grave, complex, or life threatening

Manifests symptoms needing timely intervention to prevent complications or permanent impairment.

An acute exacerbation of a chronic condition may be considered serious for the purpose of medical exception.

Chronic Medical Condition

Relatively stable

Requires long term management

Carries little immediate risk to health

Fluctuate over time, but responds to well-known standard medical treatment protocols.

Active treatment

Active treatment is reviewed in regards to intensity of services when:

- The beneficiary is seen regularly, (e.g., monthly or more frequently), and
- The condition requires timely and ongoing assessment because of the severity of symptoms, and/or the treatment.

Attending/Treating Physician

The physician (M.D. or D.O.) may be either a primary care doctor or a specialist whose scope of practice enables the interventions necessary to treat the serious condition.

MHP Participating Physician

A physician is considered “participating” in a MHP if he or she is in the MHP provider network or is available on an out-of-network basis with one of the MHPs for which the beneficiary can be enrolled. The physician may not have a contract with the 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. (Exhibit 1, p 20). (Underline added).

*Medicaid Provider Manual
Beneficiary Eligibility Chapter
April 1, 2015, pp 44-45
Emphasis added*

The Department's representative testified that Petitioner's request for a managed care exception was denied because the Department determined that Petitioner had been enrolled in a Medicaid Health Plan for more than 2 months, the medical information provided with the request was from a doctor who works for a Medicaid Health Plan available to Petitioner, and the frequency of visits for one doctor did not meet the activity of treatment criteria for an exception.

Petitioner's mother testified that the family moved to Michigan in [REDACTED] and resisted signing up for a Medicaid Health Plan because they had had straight Medicaid in [REDACTED] and it worked well. Petitioner's mother indicated that when they arrived in Michigan they were eventually told that they had to sign up for a Medicaid Health Plan, or one would be chosen for them. Petitioner's mother testified that Petitioner has three rare diseases and his treatment is very complex. Petitioner's mother indicated that Petitioner sees up to 12 different specialists for his conditions, but that they have only been able to find 7-8 so far in Michigan. Petitioner's mother testified that the family lives in a rural area, so they know they will have to travel, but many doctors in the area will not see Petitioner because of his complex medical conditions. Petitioner's mother indicated that she needs to be in straight Medicaid in order to have a choice of specialists for her son.

Petitioner's mother also testified that she is having an issue with the pharmacy through the health plan and that, contrary to the memorandum provided by the health plan, the situation was not resolved. Petitioner's mother also indicated that while Petitioner is only scheduled to see his primary care physician every six months, he has to see doctors much more frequently as needs arise.

In response, the Department's representative indicated that if Petitioner is having concerns with the service provided by the health plan, she should take advantage of her grievance and appeal rights with the health plan. The Department's representative indicated that she would put Petitioner in touch with the health plan's nurse case manager for children in the CSHCS, who can connect her with specialists at the State's various children's hospitals. The Department's representative also indicated that she would get in touch with the health plan to make sure they are on top of Petitioner's needs.

Based on the evidence presented, Petitioner failed to prove, by a preponderance of the evidence, that the Department decision was improper. The Department demonstrated that the Petitioner did not meet all of the criteria necessary for a managed care exception because the Petitioner had been enrolled in a Medicaid Health Plan for more than 2 months, the medical information provided with the request was from a doctor who works for a Medicaid Health Plan available to Petitioner, and the frequency of visits for one doctor did not meet the activity of treatment criteria for an exception. As such, the request for exception from Medicaid Managed Care was properly denied.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Petitioner does not meet the criteria for a Medicaid Managed Care exception.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



RM/cg

Robert J. Meade
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

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

Authorized Hearing Rep.

[REDACTED]