



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.: 16-007327
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 upon Petitioner's request for a hearing.

After due notice, a hearing was held on July 20, 2016. [REDACTED], Petitioner's girlfriend and Authorized Hearing Representative, appeared and testified on Petitioner's behalf. Petitioner also appeared and testified. [REDACTED], Fair Hearing Officer, appeared and testified on behalf of Respondent, [REDACTED] or Department).

ISSUE

Did the Respondent properly terminate Petitioner'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. Petitioner is a [REDACTED] year-old Medicaid beneficiary, born [REDACTED], receiving Medicaid services through the [REDACTED] Plan. (Exhibit A, p 9; Testimony)
2. [REDACTED] is an authorizing agency for substance abuse services provided under programs administered by the Department of Health and Human Services. (Exhibit A; Testimony)

3. [REDACTED] contracts with [REDACTED] to provide outpatient methadone treatment (OMT) to [REDACTED] enrollees. (Exhibit A, p 3; Testimony)
4. Petitioner has received OMT through [REDACTED] since at least [REDACTED]. (Exhibit A, p 10; Testimony)
5. Petitioner's participation in OMT requires prohibition from the use of alcohol or illicit substances not included in his treatment plan, as well as regular attendance at dosing and therapy appointments. (Exhibit A, pp 3-20; Testimony)
6. On [REDACTED], Petitioner was notified that he was being discharged from OMT because of positive drug screens for illicit substances and missing appointments. Petitioner had previously been put on a behavior contract on [REDACTED]. Petitioner's discharge was then suspended following a car accident in which he suffered significant injuries so that he could be allowed to heal without the added stressor of methadone withdrawal. (Exhibit A, pp 21-23; Exhibit 1; Testimony)
7. Following his recovery, Petitioner agreed to follow his recovery agreement in full, including being abstinent from all illicit substances and attending individual and group therapy. (Exhibit A, pp 3-20; Exhibit 1; Testimony)
8. On [REDACTED], Petitioner tested positive for cocaine, violating the recovery agreement. Petitioner also missed individual therapy on [REDACTED] and group therapy on [REDACTED]. (Exhibit A, pp 21-23; Exhibit 1; Testimony)
9. On [REDACTED], Petitioner was provided with a Notice of Action which indicated that his OMT would be terminated effective [REDACTED]. The Notice provided Petitioner with his appeal rights. (Exhibit A, pp 2-3; Exhibit 1; Testimony)
10. On [REDACTED], Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System. (Exhibit 1)

CONCLUSIONS OF LAW

The Medicaid program was established pursuant to Title XIX of the Social Security Act (SSA) and is implemented by 42 USC 1396 *et seq.*, and Title 42 of the Code of Federal Regulations (42 CFR 430 *et seq.*). The program is administered in accordance with state statute, the Social Welfare Act (MCL 400.1 *et seq.*), various portions of Michigan's Administrative Code (1979 AC, R 400.1101 *et seq.*), and the state Medicaid plan promulgated pursuant to Title XIX of the SSA.

Subsection 1915(b) of the SSA provides, in relevant part:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this title, may waive such requirements of section 1902 (other than subsection(s) 1902(a)(15), 1902(bb), and 1902(a)(10)(A) insofar as it requires provision of the care and services described in section 1905(a)(2)(C)) as may be necessary for a State –

- (1) to implement a primary care case-management system or a specialty physician services arrangement, which restricts the provider from (or through) whom an individual (eligible for medical assistance under this title) can obtain medical care services (other than in emergency circumstances), if such restriction does not substantially impair access to such services of adequate quality where medically necessary.

Under approval from the Center for Medicare and Medicaid Services (CMS), the Department (MDCH) presently operates a Section 1915(b) Medicaid waiver referred to as the managed specialty supports and services waiver. A prepaid inpatient health plan (PIHP) contracts (Contract) with MDCH to provide services under this waiver, as well as other covered services offered under the state Medicaid plan.

Pursuant to the Section 1915(b) waiver, Medicaid state plan services, including substance abuse rehabilitative services, may be provided by the PIHP to beneficiaries who meet applicable coverage or eligibility criteria. *Contract FY 2012, Part II, Section 2.1.1, pp 26-27*. Specific service and support definitions included under and associated with state plan responsibilities are set forth in the *Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter* of the Medicaid Provider Manual (MPM). *Contract FY 2012, Part II, Section 2.1.1, pp 26-27*.

Medicaid-covered substance abuse services and supports, including Division of Pharmacological Therapies (DPT)/Center for Substance Abuse Treatment (CSAT) – approved pharmacological supports may be provided to eligible beneficiaries. *Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, §§ 12.1, April 1, 2016, p. 70*.

DPT/CSAT-approved pharmacological supports encompass covered services for methadone and supports and associated laboratory services. *Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, §§ 12.2, April 1, 2016, pp. 67-69*. Opiate-dependent patients may be provided therapy using methadone or as an adjunct to other therapy.

Discontinuance/Termination of Treatment is governed by *Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, §§ 12.2.2.F, April 1, 2016, pp. 77-78*, which provides:

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 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, and services must continue and dosage levels maintained while the appeal is in process.

Services are discontinued/terminated either by Completion of Treatment or through Administrative Discontinuation. Refer to the following subsections for additional information.

Administrative Discontinuance of Treatment is governed by *MPM, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, §§ 12.2.F.2, April 1, 2016, p 77-79*, which provides:

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.

The *Medicaid Provider Manual* further specifies Medical Necessity Criteria:

SECTION 2 – PROGRAM REQUIREMENTS

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary;
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;
- Made within federal and state standards for timeliness;

- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and
- Documented in the individual plan of service.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary;
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services:
 - that are deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
 - that are experimental or investigational in nature; or
 - for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based **solely** on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis. [*Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, April 1, 2016, pp. 13-15*].

The Department's witness testified that Petitioner was administratively discharged from OMT because he continued to use illicit substances despite being on methadone and missed numerous appointments for treatment.

Petitioner's representative testified that Petitioner was put on a behavioral contract on [REDACTED] for dirty drops and missed appointments, but that the contract expired in [REDACTED] and he should have been put on a new contract after his accident. Petitioner's representative did not dispute that Petitioner tested positive for cocaine on [REDACTED] or missed appointments on [REDACTED] and [REDACTED]. Petitioner's representative indicated that Petitioner has been clean since that time and has been attending his therapy.

The Department provided sufficient evidence that its decision to terminate Petitioner from OMT was proper and in accordance with Department policy. It is clear from the evidence that Petitioner engaged in continued noncompliance with the behavioral standards for the clinic where he was receiving his methadone treatment. The Department's agent documented numerous violations of the policy contained in the Medicaid Provider Manual and the policies of Cherry Health.

As indicated above, Petitioner tested positive for cocaine on [REDACTED] and missed appointments on [REDACTED] and [REDACTED], even after he had been notified in [REDACTED] that he was being discharged from the program for positive drug screens and missed appointments. The [REDACTED] discharge was only suspended because Petitioner was in a serious car accident and Petitioner was given another chance to comply with the program rules after his recover, however, as indicated above, Petitioner failed to do so.

Petitioner's argument that he should have been put on another behavioral contract, after failing to comply with the [REDACTED] contract is without merit. The Department is under no obligation to enter into behavioral contracts with program participants and Petitioner's actions here are sufficient for his discharge from the program. The Department provided sufficient evidence that its decision to terminate Petitioner from OMT, including therapy, was proper and in accordance with Department policy. Petitioner did not prove, by a preponderance of evidence that he complied with his outpatient methadone treatment program. This means that [REDACTED] properly terminated Petitioner's outpatient methadone treatment.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Petitioner's outpatient methadone treatment program.

IT IS THEREFORE ORDERED THAT:

Respondent'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

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS Department Rep.

[REDACTED]