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Date Mailed: October 8, 2020
MOAHR Docket No.: 20-005656
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 October 7, 2020. Petitioner [redacted] appeared and testified on his own behalf. Karen Miller, Department Specialist, appeared and testified on behalf of 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 8; Testimony)

2. Petitioner has been enrolled in Medicaid since January 1, 2012, resides in Wayne County, and is in the mandatory population to enroll in a Medicaid Health Plan (MHP). Petitioner has been enrolled in Meridian Health Plan since June 1, 2020. (Exhibit A, p 1; Testimony)

3. On June 9, 2020, the Department received Petitioner's Medical Exception requests and supporting medical documentation. (Exhibit A, pp 8-17; Testimony).

4. On June 30, 2020, Petitioner's request for a managed care exception was denied because the Department determined that both of the medical

professionals who signed the exception requests accept referrals from Petitioner's Medicaid Health Plan, as well as other MHP's in Petitioner's area. (Exhibit A, pp 1, 8, 17; Testimony).

5. On June 30, 2020, Petitioner was sent a denial notice, which explained the reasons for the denial and provided Petitioner with his appeal rights. (Exhibit A, pp 18-19; Testimony)

6. On September 11, 2020, the Michigan Office of Administrative Hearings and Rules received Petitioner's Request for an Administrative Hearing. (Exhibit A, p 4; 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.

<u>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</u>.

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.

Medicaid Provider Manual
Beneficiary Eligibility Chapter
July 1, 2020, pp 43-44
Emphasis added

The Department's witness testified that Petitioner's request for managed care exceptions were denied because the Department determined that the requests were all from medical professionals who work with Petitioner's Medicaid Health Plan, as well as other MHP's in Petitioner's area. The Department's witness also indicated that while some of Petitioner's services, medications, or supplies might require prior authorization (PA), that would be true whether Petitioner was enrolled in an MHP or straight Medicaid.

The Department's witness testified that should Petitioner be denied a service, medication, or supply by his MHP, he would have the right to appeal that denial.

Petitioner testified that he requested the hearing because, due to his disability, he requires long term medications, equipment and services that require prior authorization every year. Petitioner indicated that he requires a special type of pen to treat his diabetes and cannot use regular vials and needles due to issues he has with dexterity. Petitioner testified that every year he must request prior authorization for something, and this results in him running low on medication and supplies. Petitioner testified that he has realized over the years that the MHP's do not cover all the same medications and services that straight Medicaid does. Petitioner indicated that he also wears an insulin meter on his arm because of dexterity issues and this meter is covered through straight Medicaid but not through the MHP's.

In response, the Department's witness indicated that it is possible some items Petitioner believes were covered in the past under straight Medicaid but are not currently covered under the MHP's could have been covered through Children's Special Healthcare Services when Petitioner was in that program. The Department's witness testified that if something is denied by the MHP, Petitioner should appeal that decision, especially if Petitioner can show the item is covered under straight Medicaid. The Department's witness also indicated that Petitioner could request a nurse case manager through his MHP and that nurse case manager would be responsible for assisting Petitioner and making sure that he gets all of his medication and equipment in a timely manner.

Based on the evidence presented, Petitioner failed to prove, by a preponderance of the evidence, that the Department's decision was improper. The Department demonstrated that the Petitioner did not meet all of the criteria necessary for a managed care exception because the medical professionals who signed the exception requests accept referrals from Petitioner's Medicaid Health Plan as well as other MHP's in Petitioner's area. As indicated above, policy states, "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." While the undersigned can sympathize with Petitioner's situation, the Department's decision was reached within policy and must be upheld. The undersigned would encourage Petitioner to follow the advice of the Department's witness and seek a nurse case manager through his MHP and timely appeal any denials he receives through his MHP. However, based on the evidence presented, the request for exceptions from Medicaid Managed Care were 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/sb

Robert J. Meade
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS Department Rep.

Karen Miller
PO Box 30479
Lansing, MI
48909

Petitioner

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