



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

Redact

DECISION

MPA/161679

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 27, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 17, 2014, at Superior, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Sovaldi.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Redact

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Redact, R.Ph.

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Douglas County.
2. On August 8, 2014, the petitioner with Redact requested a 24-week supply of Sovaldi 400mm tablets. The provider submitted more information at the Department's request, but the

Department found this information incomprehensible and asked the provider to submit a new prior authorization. The provider resubmitted the original request. The Department denied the request on September 18, 2014. The drug would cost at least \$168,000 for the 24-week period.

3. The petitioner has grade 2, stage 2 to early stage 3 liver disease caused by hepatitis C.
4. The petitioner has not submitted clear evidence demonstrating how Sovaldi will alleviate or repair her liver damage.
5. The petitioner has not submitted any information proving that treatment less expensive than Sovaldi would be ineffective.

### DISCUSSION

The petitioner seeks payment from the medical assistance program for Sovaldi to treat her liver damage from Hepatitis C. The Department requires prior authorization for drugs it “has determined entail substantial cost or utilization problems for the MA program.” Wis. Admin. Code, § DHS 107.10(2)(d). To comply with this regulation, it developed a preferred drug list in 2004 and requires prior authorization for all non-preferred drugs. Sovaldi is non-preferred and requires prior authorization when used to treat hepatitis C because each treatment costs at least \$84,000; the provider did not indicate how much this request, which seeks funding for 24 weeks, would cost, but the Department indicated that it would be over \$168,000.

The petitioner and her provider have must prove by the preponderance of the credible evidence that the drug is needed. As with any request for a medical assistance service, she must prove, among other things, that the drug is medically necessary and appropriate. The Department must consider the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code § DFS 107.02(3)(e)1.,2.,3.,6. and 7. “Medically necessary” means a medical assistance service under ch. HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Administrative hearings are more informal than jury trials, but when someone seeks treatment that will cost over \$300,000 a year, support for the request should include competent expert opinions, preferably in the form of live testimony. The petitioner’s request includes a couple dozen pages of medical records, but as the Office of Inspector General’s reviewer points out, these are difficult to follow. The only explanation of the need for Sovaldi came in the form of a one-page letter from a physician’s assistant

treating the petitioner. Although I do not doubt his ability to provide general medical care, he lacks the credentials to argue that this particular expensive drug is needed to treat the petitioner and that other less expensive drugs will not. Moreover, nothing in his statement compared Sovaldi to any other treatment. The petitioner was polite woman, but she could not provide any in depth explanation of her medical condition and why she needed Sovaldi, other than “to stay alive.” I understand her concern, but nothing in the record proves that Sovaldi alone will accomplish this.

The Department argues that the petitioner’s request does not meet the prior authorization criteria it has established specifically to Sovaldi. There is no need to evaluate this argument because, as submitted, the request does not cross the more generic threshold posed by the generic medical assistance criteria. Nothing prevents the petitioner from submitting a new request for this drug, but if she does so, she and her provider must submit more detailed proof concerning exactly how Sovaldi will help her and why other, less expensive treatment will not.

### **CONCLUSIONS OF LAW**

The Office of Inspector General correctly denied the petitioner’s request for Sovaldi because she has not shown by the preponderance of the credible evidence that it is medically necessary.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 6th day of January, 2015

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 6, 2015.

Division of Health Care Access and Accountability