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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of:

██████████ ██████████
██████████ ██████████
██████████ ██████████

DECISION

MPA/163426

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2015, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on April 16, 2015. At petitioner’s request a Hearing scheduled for March 10, 2015 was rescheduled.

The issue for determination is whether DCHAA was correct to deny Prior Authorization [“PA”] for MA payment for the drug Harvoni for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
██████████ ██████████
██████████ ██████████

Respondent:

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

BY: Lynn Radmer, R.Ph., Pharmacy Practices Consultant (Dr. Radmer did not appear at the April 16, 2016 Hearing in this matter but submitted a letter dated March 4, 2015 with attachments.)

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

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (60 years old) is a resident of Adams County, Wisconsin.
2. Petitioner has been diagnosed with hepatitis C; he also has diabetes type 2 and in 1991 had Coronary Artery Bypass Graft surgery ["CABG"].
3. Petitioner's provider, Dean Clinic Pharmacy of Madison, Wisconsin, requested PA (PA # [REDACTED] dated December 4, 2014) for MA coverage of 84 tablets (a 12 week supply; 1 tablet daily) of the drug Harvoni at a cost of \$113,420.00 (\$1,350.24 per tablet).
4. DCHAA denied PA # [REDACTED] for the drug Harvoni; DCHAA sent a letter to petitioner dated December 16, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial.
5. Based on the evidence in the record of this matter petitioner's hepatitis C has not advanced to any of the following stages:
 - Compensated cirrhosis.
 - Metavir score of F3 or greater or evidence of bridging fibrosis.
 - Serious extra-hepatic manifestations of hepatitis C virus ["HCV"].

DISCUSSION

As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to make such a showing.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6) (2013-14). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008).

In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (February 2014). Written state policy limitations provide that PA for Harvoni can be approved only for MA recipients whose hepatitis C liver disease has advanced to any of the following stages:

- Compensated cirrhosis.
- Metavir score of F3 or greater or evidence of bridging fibrosis.
- Serious extra-hepatic manifestations of hepatitis C virus ["HCV"].

See, *ForwardHealth Update*; November 2014; No. 2014-74 (page 2); See also, *ForwardHealth Online Handbook* Topic 17697.

Based on the evidence in the record petitioner's hepatitis C has not advanced to any of the stages listed above (medical records that are part of the record of this matter are inconclusive as to whether petitioner's has cirrhosis of the liver). Therefore, DCHAA's denial must be sustained.

CONCLUSIONS OF LAW

For the reasons discussed above, DCHAA was correct to deny PA for MA payment for the drug Harvoni for petitioner.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 28th day of April, 2015

\sSean P. Maloney
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 April 28, 2015.

Division of Health Care Access and Accountability