



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/164132

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 18, 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 in regard to Medical Assistance, a hearing was held on March 25, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for a 26-week course of Harvoni to treat his hepatitis C.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Lynn Radmer, 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. Petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. On December 31, 2014, the petitioner with Mayo Clinic Health Systems Pharmacy requested a 26-week supply of Harvoni at a cost of \$257,144.11. After reviewing additional information

provided by Mayo Clinic, the Office of Inspector General denied the request. The date of the denial is unknown because the office's denial letter is not in the file.

3. The petitioner is diagnosed with hepatitis C, genotype 1a, with cirrhosis.
4. The petitioner was treated with interferon with ribavirin for three months but "had a null response."

### DISCUSSION

Federal medical assistance rules allow, but do not require, states to pay for prescription drugs. 42 C.F.R. § 440.225. Wisconsin pays for prescription drugs (Wis. Admin. Code § DHS 107.10), but uses the discretion granted by the federal government to control their cost by dividing them into two classes, preferred and non-preferred. Preferred drugs are usually older, often generic, and almost always less expensive than non-preferred drugs. Wisconsin requires prior authorization before paying for non-preferred prescription drugs, which it refers to as those it "has determined entail substantial cost or utilization problems for the MA program." Wis. Admin. Code, § DHS 107.10(2)(d).

The petitioner seeks payment from the medical assistance program for Harvoni to treat his liver damage from Hepatitis C. Harvoni is a non-preferred drug requiring prior authorization when used to treat hepatitis C because each treatment costs between \$63,000 and \$189,000; the petitioner's request, if approved, would cost even more, at \$257,144.11. The petitioner and his 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, the petitioner 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 "[r]equired to prevent, identify or treat a recipient's illness, injury or disability" and, among other things, "[w]ith 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. Wis. Admin. Code, § DHS 101.03(96m)(a) and (b)8.

The department has developed guidelines concerning when to pay for Harvoni. These guidelines undoubtedly deny Harvoni to persons it would help, but this must be viewed in the context of the drug's high cost, the need for the medical assistance program to treat all sorts of people with all sorts of medical problems, and the fact that because the state does not have to cover any prescription drugs it could end the prescription drug portion of the medical assistance program if it cannot control costs. Given this, I find that these guidelines are reasonable.

The guidelines are found in the department's online medical assistance handbook, Topic 17717, at [https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=48&s=3&c=345&nt=Hepatitis C, Agents, Harvoni&adv=Y](https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=48&s=3&c=345&nt=Hepatitis%20C,%20Agents,%20Harvoni&adv=Y). The most relevant guideline for the petitioner's matter is the following note that requires the substitution of Sovaldi for Harvoni when 24 weeks of treatment are requested:

Note: For treatment experienced members with cirrhosis who meet the above criteria for PA review consideration, requests for 24 weeks of treatment with Harvoni<sup>®</sup> will not be considered. In these cases, if the member does meet the above review criteria, the provider and member may decide to proceed with a treatment course of Sovaldi<sup>™</sup> with ribavirin. *Id.*

*Id.*

The petitioner requested 26 weeks of Harvoni. Because this is at least 24 weeks, I must uphold the Office of Inspector General's denial. I suggest that the petitioner's provider read the Office of Inspector General's March 11, 2015, letter to determine what additional information it seeks and to submit a new claim with that information for Sovaldi. I also suggest that if the request for Sovaldi is denied, and the petitioner's providers believe that the request does in fact meet the Sovaldi guidelines, the petitioner try to obtain legal representation and an expert medical witness. To be clear the focus of any hearing will be on whether the petitioner meets the Sovaldi guidelines and not whether those guidelines constitute the wisest course of action for those with hepatitis C. Disability Rights Wisconsin often represents those such as the petitioner; its telephone number is 608-267-0214. The Office of Inspector General also can bring a lawyer and expert witness, of course.

### **CONCLUSIONS OF LAW**

The Office of Inspector General correctly denied the petitioner's request for Harvoni the department does not allow a 26-supply of the drug..

**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 10th day of April, 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 April 10, 2015.

Division of Health Care Access and Accountability