



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/170119

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 10, 2015, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for Harvoni, a hearing was held on December 9, 2015, by telephone.

The issue for determination is whether petitioner meets to approval criteria for Harvoni.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Written submission of [REDACTED] Pharmacy Practices Consultant

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 62-year-old resident of La Crosse County who receives MA.
2. Petitioner has hepatitis C with cirrhosis of the liver. He is listed as having a Child-Turcotte-Pugh (CTP – a test of the level of cirrhosis) score of 10, which would put him in the Class B level of the illness.
3. On October 22, 2015, [REDACTED] Pharmacy requested prior authorization on petitioner's behalf for Harvoni, PA no. [REDACTED]. By a notice dated October 28, 2015 the DHCAA denied the request.

4. Petitioner is not shown to have a Metavir score of at least F3 and is not shown to have serious extra-hepatic manifestations of the hepatitis C. Use of Viekera Pak is medically contraindicated for petitioner. He is not on a liver transplant list.

### DISCUSSION

Drugs that entail substantial cost or utilization problems are subject to prior authorization. Wis. Admin. Code, §DHS 107.10(2)(d). The Department has utilized a preferred drug list since 2004 to inform pharmacies what drugs require authorization. Harvoni is a non-preferred drug that requires authorization because of its high cost. MA providers were informed of the policy regarding drugs such as Harvoni in Forward Health Update no. 2014-74, dated November, 2014 and effective December 1, 2014. The policy was updated effective July 1, 2015, and providers were notified of the change by ForwardHealth Update no. 2015-27, a copy of which is attached to the DHCAA case summary dated November 30, 2015.

Under current policy MA will cover Harvoni only if the person cannot use the preferred Viekera Pak due to medical contraindications, and then only if the person has compensated cirrhosis Class A, a Metavir score of F3 or greater, or serious extra-hepatic manifestations of the hepatitis C virus. Harvoni is denied if the person has cirrhosis Class B or C. See Update 2015-27, pages 13-14. If the person is on a liver transplant list the DHCAA will review the person's individual circumstances.

The Department cites recommendations of the American Association for the Study of Liver Disease (AASLD). The study strongly recommends Harvoni for Class A level cirrhosis, but that its efficacy has not been established for Class B or C cirrhosis.

Because petitioner's cirrhosis is at least Class B (the DHCAA says it is Class C, but petitioner's provider says it is Class B), the DHCAA denied the request. Petitioner's doctor wrote a letter recommending Harvoni because he believes the treatment will stabilize the liver disease with a result that petitioner will have a long survival. The problem for me is that the Division of Hearings and Appeals does not have authority to contradict Department policy without strong evidence that the policy is wrong. At this point I must conclude that the DHCAA correctly denied the request for Harvoni because its policy directs the denial. If petitioner's doctor and other professionals in the field disagree with the policy, they will have to convince the Department that the policy is flawed. The evidence here is not sufficient for this office to take that step.

### CONCLUSIONS OF LAW

The DHCAA correctly denied the request for Harvoni because petitioner's condition does not meet the criteria for approval.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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 18th day of December, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



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

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 18, 2015.

Division of Health Care Access and Accountability