



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

In the Matter of:

██████████
██████████
██████████

DECISION

██████████

PRELIMINARY RECITALS

Pursuant to a petition filed October 2, 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 December 15, 2015. The record of the December 15, 2015 Hearing was held open until December 16, 2015. At petitioner’s request a Hearing scheduled for November 17, 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: ██████████, R.Ph., Pharmacy Practices Consultant (Dr. ██████████ did not appear at the December 15, 2015 Hearing in this matter but submitted a letter dated October 29, 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

[REDACTED]

FINDINGS OF FACT

1. Petitioner (63 years old) is a resident of La Crosse County, Wisconsin.
2. Petitioner has been diagnosed with hepatitis C; petitioner is alcoholic but has been abstinent from alcohol since November 30, 2014.
3. On September 9, 2015 petitioner's provider, Walmart #1679 of Onalaska, Wisconsin, requested PA (PA # [REDACTED] dated September 2, 2015) for MA coverage of 84 tablets (a 12 week supply; 1 tablet daily) of the drug Harvoni at a cost of \$107,257.00 (\$1,276.87 per tablet). Exhibit #1.
4. DCHAA denied PA # [REDACTED] for the drug Harvoni; DCHAA sent a letter to petitioner dated September 23, 2015 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial. Exhibit #1.
5. Based on the evidence in the record of this matter petitioner has hepatitis C with moderate or severe liver function compromise (CTP class B or C). Exhibit #1.

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) (August 2015); 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. (August 2015). Written state policy limitations provide that PA for Harvoni will be denied if the member has cirrhosis with moderate or severe liver functional compromise (i.e., CTP class B or C). However, if the member is currently on a liver transplant wait list with an elevated MELD score, individual circumstances will be considered for review.

See, *ForwardHealth Update*; June 2015; No. 2015-27 (page 14); See also, *ForwardHealth* Online Handbook Topic 17977.

Based on the evidence in the record of this matter petitioner has hepatitis C with moderate or severe liver function compromise (CTP class B or C). Therefore, DCHAA was correct to deny PA for MA payment for the drug Harvoni for petitioner.

During the December 15, 2015 Hearing petitioner testified that at the beginning of November 2015 he was placed on a liver transplant waitlist. If that is the case petitioner should have his provider immediately file a new PA with that information along with his MELD score. This will allow DCHAA an opportunity to consider petitioner's individual circumstances for review.

[REDACTED]

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 8th day of January, 2016

\sSean P. Maloney
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 8, 2016.

Division of Health Care Access and Accountability