



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/173738

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 2016, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to Medical Assistance (MA) authorization for Harvoni, a hearing was held on May 24, 2016, at Marshfield, Wisconsin, with the parties appearing by telephone. A hearing set for May 19, 2016 was rescheduled by the Division of Hearings and Appeals.

The issue for determination is whether petitioner's appeal was untimely.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Written submission of [Redacted], R.Ph.

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Wood County who receives MA.
2. Petitioner has hepatitis C with cirrhosis of the liver. She is listed as having a Child-Turcotte-Pugh (CTP - a test of the level of cirrhosis) score of 10, which would put her in the Class B level of the illness.
3. On December 18, 2015, Marshfield Clinic Pharmacy requested prior authorization on petitioner's behalf for Harvoni, PA no. [Redacted]. By a notice dated February 11, 2016 the DHCAA denied the request. The notice informed petitioner that if she wanted to appeal the denial she needed to do so by March 27, 2016.

4. Petitioner filed this appeal by a letter postmarked April 14, 2016.

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 Viekira 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.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

Petitioner filed this appeal 63 days after the February 11, 2016 denial notice. The Division of Hearings and Appeals thus cannot rule on the merits of the denial.

CONCLUSIONS OF LAW

Petitioner's appeal of an MA prior authorization denial was filed untimely.

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 27th day of May, 2016

\sBrian C. Schneider
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 May 27, 2016.

Division of Health Care Access and Accountability