



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MPA - 174626

PRELIMINARY RECITALS

Pursuant to a petition filed on May 23, 2016, 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 regarding Medical Assistance (MA), a hearing was held on June 28, 2016, by telephone from Madison, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Viequera Pak to treat his hepatitis C.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted] (written appearance only)
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. The petitioner has been diagnosed with hepatitis C.

3. On March 30, 2016, the petitioner with Froedtert 87<sup>th</sup> Street Pharmacy requested a 12 week course of Viekira Pak to treat his hepatitis C. The Office of Inspector General denied his request on April 12, 2016.
4. The petitioner has not had a liver transplant and is not on a liver transplant waiting list, he does not have liver cancer, and he has no history of alcohol or drug abuse.
5. The petitioner does not have compensated cirrhosis of the liver.

### **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 controls 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 Viekira Pak to treat his liver damage from Hepatitis C. Because of its cost, \$87,995.00 to fill the petitioner’s prescription, Viekira Pak is a non-preferred drug requiring prior authorization when used to treat hepatitis C.

The petitioner and his provider 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 Viekira Pak. These guidelines, which are found in the department’s online medical assistance handbook, Topic 16557, at <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=48&s=3&c=345>, allow the drug to be considered for those whose hepatitis C has advanced to any of the following stages:

- Compensated cirrhosis
- Metavir score of F3 or greater or evidence bridging fibrosis
- Serious extra-hepatic manifestations of hepatitis C virus (HCV)

The drug must be prescribed by a “gastroenterologist or infectious disease provider practice,” and the recipient must be at least 18 years old diagnosed with chronic hepatitis C genotype 1. *Id.*

Viekira Pak will be denied under the following circumstances:

- The member has autoimmune hepatitis.

- The member has a significant or uncontrolled concurrent disease (e.g., depression, thyroid disease, diabetes, cardiovascular disease, pulmonary disease).
- The member has decompensated cirrhosis.
- The member has acute hepatitis C.
- The member has received a liver transplant.
- The member is currently abusing drugs or alcohol.
- The member is co-infected with HIV.
- The member has taken or is currently taking Sovaldi™.
- Non-compliance with approved hepatitis C treatment regimen (for renewals only).

*Id.*

The Wisconsin MA program does cover the less expensive prescription drug Interferon to treat less severe hepatitis C complications. *Id.*, *Preferred Drug List-Quick Reference*.

Viekira Pak undoubtedly would also help those with less severe complications. But this must be viewed in the context of the high cost of the drug, 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. Viewed in this context, the policy is reasonable, even if it does not provide the best possible medical care for all who have hepatitis C.

The petitioner testified that he was unaware if he has compensated cirrhosis, and his medical records do not confirm the presence of this either. His request does not report a Metavir score of F3 or greater or evidence of bridging fibrosis. He understandably seeks to avoid developing Hepatitis C complications and transmitting his disease, but I can only determine his request according to whether he meets the department's criteria. He clearly does not. Therefore, I must uphold its decision.

### **CONCLUSIONS OF LAW**

The Office of Inspector General correctly denied the petitioner's request for Viekira Pak because he has not shown by the preponderance of the credible evidence that it is medically necessary.

**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, **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 16th day of August, 2016

\s \_\_\_\_\_  
Peter McCombs  
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 August 16, 2016.

Division of Health Care Access and Accountability