STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-002418 MHP

[redacted]

Appellant

_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant appeared and testified on his own behalf. [redacted], Medicaid Manager, appeared and testified for the Medicaid Health Plan (MHP), [redacted].

ISSUE

Did the MHP properly deny the Appellant's request for Harvoni 90 mg-400 mg tablets?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. Appellant is a [redacted]-year-old (DOB [redacted]1/[redacted]) Medicaid beneficiary receiving services under the Healthy Michigan Plan. (Exhibit A, p. 7, 10, 14 and testimony).

2. On [redacted], the MHP received a Prior Authorization (PA) Request from [redacted] [redacted] PA, from Gastroenterology Consultants on behalf of the Appellant for Harvoni 90 mg-400 mg tablets. (Exhibit A, pp. 1, 7-12 and testimony).

3. On [redacted] denial letters were sent to the Appellant and the Appellant's provider. The reason for the denial was that Harvoni 90-400 mg tablets did not meet the coverage criteria under [redacted] drug policy. The letter noted that Harvoni 90 mg-400 mg tablets is not on the MHP's formulary, and it was also not on the [redacted]

[redacted] Medicaid Fee-For-Service Michigan Pharmaceutical Product List. (Exhibit A, pp. 1, 22-24 and testimony).

4. On [redacted] the Appellant filed a Request for Hearing with the Michigan Administrative Hearing System (MAHS). (Exhibit A, pp. 4-5).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

On May 30, 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified MHPs.

The Respondent is one of those MHPs.

> The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below. The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care but may not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of the diagnosis, type of illness, or condition of an enrollee. In general, the Contractor is responsible for covered services related to the following:
>
> - The prevention, diagnosis, and treatment of health impairments
> - The ability to achieve age-appropriate growth and development
> - The ability to attain, maintain, or regain functional capacity
>
> The Contractor must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 2.024.

Although the Contractor must provide the full range of covered services listed below they may choose to provide services over and above those specified.

The covered services provided to enrollees under this Contract include, but are not limited to, the following:

- Ambulance and other emergency medical transportation
- Blood lead testing in accordance with Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) policy
- Certified nurse midwife services
- Certified pediatric and family nurse practitioner services
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment (DME) and supplies
- Emergency services
- End Stage Renal Disease services
- Family planning services (e.g., examination, sterilization procedures, limited infertility screening, and diagnosis)
- Health education
- Hearing and speech services
- Hearing aids (only for enrollees under 21 years of age)
- Home Health services
- Hospice services (if requested by the enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative services (in a nursing facility), up to 45 days
- Restorative or rehabilitative services (in a place of service other than a nursing facility)
- Medically necessary weight reduction services
- Mental health care – maximum of 20 outpatient visits per calendar year in accordance with Medicaid policy as stated in the Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, Beneficiary Eligibility Section
- Out-of-state services authorized by the Contractor
- Outreach for included services, especially pregnancy-related and Well child care
- Parenting and birthing classes
- Pharmacy services
- Podiatry services

- Practitioners' services (such as those provided by physicians, optometrists and dentists enrolled as a Medicaid Provider Type 10)
- Prosthetics and orthotics
- Tobacco cessation treatment including pharmaceutical and behavioral support
- Therapies (speech, language, physical, occupational) excluding services provided to persons with development disabilities which are billed through Community Mental Health Services Program (CMHSP) providers or Intermediate School Districts.
- Transplant services
- Transportation for medically necessary covered services
- Treatment for sexually transmitted disease (STD)
- Vision services
- Well child/EPSDT for persons under age 21 [Article 1.020 Scope of [Services], at §1.022 E (1) contract, 1/23/2013, pp. 22-23].

* * *

(7) Pharmacy

The Contractor may have a prescription drug management program that includes a drug formulary. DCH may review the Contractor's formularies regularly, particularly if enrollee complaints regarding access have been filed regarding the formulary. The Contractor must have a process to approve physicians' requests to prescribe any medically appropriate drug that is covered under the Medicaid Pharmaceutical Product List (MPPL). [Article 1, 1.022 Work and Deliverables, at §1.022 E (7) contract, 12/5/2013, p. 27].

* * *

AA. Utilization Management

(1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:

a) Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
b) A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
c) Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.

d) An annual review and reporting of utilization review activities and outcomes/interventions from the review.
e) The UM activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure

The Contractor must establish and use a written prior approval policy and procedure for UM purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review. [Contract, *supra,* p. 55].

The DHHS-MHP contract provisions allow prior approval procedures for utilization management purposes. The DHHS-MHP contract provisions also allow the MHP to have a drug management program that includes a drug formulary. The MHP reviewed the prior authorization request under [redacted] drug policy/drug formulary and their Pharmacy Prior Authorization form. (Exhibit A, pp. 6, 20-21, 62-63).

Respondent's witness and the documentary evidence admitted during the hearing establish that on [redacted] the MHP received a Prior Authorization (PA) Request from [redacted] PA, on behalf of the Appellant for Harvoni 90 mg-400 mg tablets. On [redacted], denial letters were sent to the Appellant and the Appellant's provider. The reason for the denial was that Harvoni 90 mg-400 mg tablets did not meet the coverage criteria under [redacted] drug policy. The letter noted that Harvoni 90 mg-400 mg tablets are not on the MHP's formulary, and are also not on the [redacted] Medicaid Fee-For-Service Michigan Pharmaceutical Product List.

The Appellant testified he was diagnosed with Hepatitis C about [redacted] years ago. He has also been diagnosed with chronic depression, chronic sleep apnea, GERD, osteoporosis, uncontrollable high blood pressure, persistent headaches, and lower back pain. Appellant said he was not considered a candidate for Interferon because of his chronic depression and other ailments. He said that he was then referred to a doctor who recommended that he try the new medications that are Interferon free, such as the Harvoni. The Appellant stated he does understand that the Harvoni is not approved by the formulary for the [redacted], and he has no grievance with the MHP. Appellant said he really wants the State's formulary straightened out so that the Harvoni can be approved. Appellant said

that the Harvoni was a single dose medication that was less likely to interfere with his other medications.

The Appellant failed to satisfy his burden of proving by a preponderance of the evidence that the MHP improperly denied his PA request for Harvoni 90 mg-400 mg tablets. The MHP established that Harvoni 90 mg-400 mg tablets did not meet the coverage criteria under [redacted] drug policy. Harvoni 90 mg-400 mg tablets are not on the MHP's formulary, and they are also not on the [redacted] Medicaid Fee-For-Service Michigan Pharmaceutical Product List. Accordingly, the Harvoni did not meet the coverage criteria under [redacted] drug policy and it could not be approved for Medicaid coverage.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that the MHP's denial of the Appellant's request for Harvoni 90 mg-400 mg tablets on [redacted] was proper.

IT IS THEREFORE ORDERED that:

The MHP's decision is **AFFIRMED**.

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [redacted]

Date Mailed: [redacted]

WDB/db

cc: [redacted]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.