



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 31, 2016
MAHS Docket No.: 16-001595
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. Petitioner appeared on behalf of the Petitioner; [REDACTED], Appeals Specialist, represented Respondent [REDACTED], the Medicaid Health Plan (MHP).

ISSUE

Did the Medicaid Health Plan properly deny Petitioner's request for Harvoni?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. [REDACTED] Health Plan (MHP) is contracted with the state of Michigan to arrange for the delivery of health services to Medicaid recipients.
2. At all times relevant to this case, Petitioner was enrolled in the MHP.
3. On [REDACTED], Respondent received a Prior Authorization request from Petitioner's physician, requesting the medication Harvoni for treatment of Hepatitis C.
4. On [REDACTED], Respondent reviewed the request and sent Petitioner a Notice of denial stating: Harvoni has not yet been determined by the State of Michigan to be a covered benefit for Medicaid Members.
5. On [REDACTED], Petitioner filed a Request for Hearing with the Michigan Administrative Hearing System (MAHS) to contest the negative action.

6. As of [REDACTED], the medication Harvoni has been placed on a 'carve out' list on a fee for service basis through [REDACTED].

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 Medicaid Health Plans.

The Respondent is one of those Medicaid Health Plans.

The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. Contractors 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 1-Z.

*Article II-G, Scope of Comprehensive Benefit Package.
MDHHS contract (Contract) with the Medicaid Health Plans,
September 30, 2004.*

The major components of the Contractor's utilization management plan must encompass, at a minimum, the following:

- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
- A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.

- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.

The Contractor must establish and use a written prior approval policy and procedure for utilization management 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 utilization management decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

*Article II-P, Utilization Management, Contract,
September 30, 2004.*

As stated in the Department-MHP contract language above, a MHP “must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations.”

The Michigan Medicaid Formulary does not include the medication Harvoni as a covered benefit. Harvoni is not a Medicaid covered benefit at the time of the request. In addition, Petitioner’s doctor did not provide a request for an exception to policy that waiting for approval of the drug would put Petitioner’s health in jeopardy. Petitioner’s physician may ask for an exception, but the prescriber needs to explain the medical reasons why Petitioner needs an exception approved; why other covered drugs are not medically appropriate for Petitioner’s condition, and why waiting to start this drug until after the review process is complete may seriously jeopardize Petitioner’s health. If the drug is medically appropriate and waiting to start treatment will cause significant complications to Petitioner’s health, the prescriber should provide a new prior authorization request to [REDACTED] for the medication Harvoni, as it has been placed on a ‘carve out’ list as of [REDACTED] and is now covered by Medicaid through the fee for service program for treatment of Hepatitis C.

Petitioner has failed to satisfy the burden of proving by a preponderance of the evidence that the MHP improperly denied the requested medication. The denial is based upon Medicaid benefit exclusion. The Medicaid Health Plan (MHP) does not have discretion to approve Petitioner’s request for items which are not covered Medicaid benefits. The decision to deny the request for authorization must be upheld under the circumstances.

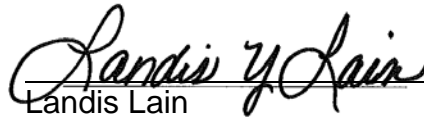
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that

IT IS, THEREFORE, ORDERED that:

The Medicaid Health Plan's decision is **AFFIRMED**.

LL ■



Landis Lain
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

[REDACTED]

Community Health Rep

[REDACTED]

Petitioner

[REDACTED]