RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: February 1, 2017
MAHS Docket No.: 16-017352
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a telephone hearing was held on January 24, 2017. Petitioner appeared and testified on his own behalf. [redacted], a Clinical Pharmacist with Magellan Medicaid Administration (MMA), represented the Michigan Department of Health and Human Services (DHHS or Department).

ISSUE

Did the Department properly deny Petitioner's prior authorization requests for the medication 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. MMA contracts with the Department to review prior authorization requests for specified medications. (Testimony of Respondent's representative).

2. On October 21, 2016, MMA received a prior authorization request submitted on Petitioner's behalf by a [redacted], and requesting the medication Harvoni for Petitioner. (Exhibit A, pages 5-6).

3. The request form and attached medical documentation indicated that Petitioner had been diagnosed with Chronic Hepatitis C, but that he also had a Metavir score of F0-F2 and no signs of significant liver disease, an HIV co-infection, an enlarged spleen, or any other comorbidities of Hepatitis C. (Exhibit A, pages 5-6, 10-21; Testimony of Respondent's representative).

4. After finding that the request did not meet Michigan Medicaid Clinical and PDL Criteria, MMA forwarded the request to the Department for a physician review. (Testimony of Respondent's representative).

5. On October 24, 2016, a [redacted] reviewed the request and determined that it should be denied. (Exhibit A, page 22).

6. That same day, she emailed MMA and advised it that the request should be denied on the basis that:

> Does not meet current hepatitis C coverage criteria, which includes patients with F3 or greater liver involvement or comorbid conditions.
>
> *Exhibit A, page 22*

7. MMA then sent Petitioner's doctor an electronic notice of denial. (Exhibit A, page 24).

8. On October 25, 2016, MMA also sent Petitioner written notice that his request for Harvoni had been denied because it did not meet criteria. (Exhibit A, page 26).

9. Petitioner's doctor subsequently submitted a Letter of Appeal to MMA in which she wrote in part:

> Given the patient's history, condition and the published data supporting the use of Harvoni for 12 weeks, the long term complications of untreated CHC, and the AASLD's position in treatment, I believe the treatment is warranted, appropriate and medically necessary. Delaying therapy is not prudent and puts his health in unnecessary jeopardy. [Petitioner] has a primary medical history of congestive heart failure, hypertension, prostate cancer, and blood clots these are currently well managed. Treatment for [Petitioner] with Harvoni 12 weeks would provide a better chance for SVR and a decrease in complications from CHC.
>
> *Exhibit A, pages 8-9*

10. MMA forwarded the appeal to the Department for a physician review. (Testimony of Respondent's representative).

11. On December 5, 2016, [redacted] reviewed the request and determined that it should be denied for the same reasons as before. (Exhibit A, page 22).

12. MMA then sent Petitioner's doctor another electronic notice of denial. (Exhibit A, page 23).

13. On December 6, 2016, MMA also sent Petitioner written notice that his request for Harvoni had again been denied because it did not meet criteria. (Exhibit A, page 26).

14. On November 28, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner in this matter with respect to the denials. (Exhibit A, page 2).

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.

The Social Security Act § 1927(d), 42 USC 1396r-8(d), also provides as follows:

> (d) Limitations on Coverage of Drugs –
>
> (1) Permissible Restrictions –
>
> (A) A state may subject to Prior Authorization any covered outpatient drug. Any such Prior Authorization program shall comply with the requirements of paragraph (5).
>
> (B) A state may exclude or otherwise restrict coverage of a covered outpatient drug if –
>
> (i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6);
>
> (ii) the drug is contained in the list referred to in paragraph (2);
>
> (iii) the drug is subject to such restriction pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4); or

(iv) the State has excluded coverage of the drug from its formulary in accordance with paragraph 4.

(2) List of drugs subject to restriction–The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

(A) Agents when used for anorexia, weight loss, or weight gain.

(B) Agents when used to promote fertility.

(C) Agents when used for cosmetic purposes or hair growth.

(D) Agents when used for the symptomatic relief of cough and colds.

(E) Agents when used to promote smoking cessation.

(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

(G) Nonprescription drugs.

(H) Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

(I) Barbiturates.

(J) Benzodiazepines.

(K) Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

* * *

(4) Requirements for formularies — A State may establish a formulary if the formulary meets the following requirements:

(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State's drug use review board established under subsection (g)(3)).

(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer, which has entered into and complies with an agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from appropriate compendia described in subsection (k)(6)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

(D) The state plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a Prior Authorization program that is consistent with paragraph (5),

(E) The formulary meets such other requirements as the Secretary may impose in order to

> achieve program savings consistent with protecting the health of program beneficiaries.
>
> A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.
>
> (5) Requirements of Prior Authorization programs—A State plan under this title may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) only if the system providing for such approval –
>
> (A) Provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and
>
> (B) Except with respect to the drugs referred to in paragraph (2) provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

Exhibit A, pages 36-38

The Department is, therefore, authorized by federal law to develop both a formulary of approved prescriptions and a prior authorization process.

It has done so and, with respect to initial requests for Harvoni, the Michigan Medicaid Clinical and PDL Criteria provides that the request may only be approved if the patient has, among other things, either a documented Metavir fibrosis score consistent with a Metavir score of F3 or F4; a comorbid condition such as HIV co-infection, prior liver transplant, or severe extra hepatic manifestation of Hepatitis C; or an APRI score greater than or equal to 1.5 or a FIB-4 score greater than or equal to 3.25. *See* Exhibit A, pages 27-28. Moreover, as provided in Respondent's exhibit, both a June 22, 2016 letter from the Department's Chief Medical Officer and the Minutes to a December 8, 2015 meeting of the MDHHS Pharmacy and Therapeutics Committee also reflect the Department's determination that requests for Harvoni will be reviewed on a case-by-case basis and that coverage at this time is only being provided for those most severely impacted by Hepatitis C. *See* Exhibit A, pages 31-37.

Accordingly, as testified to by Respondent's witness, MMA forwarded the request in this case on to the Department for a physician reviewer. The physician reviewer then determined that the request should be denied as the submitted documentation failed to demonstrate that Petitioner met the above criteria.

In response, Petitioner testified that he does not want to wait until he gets worse to get the necessary medication.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying his prior authorization requests. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decisions was made.

Given the available information and applicable policies in this case, Petitioner has failed to meet his burden of proof and the Respondent's decision must be affirmed. As discussed above, the Department has been authorized by federal law to develop both a formulary of approved prescriptions and a prior authorization process; it has done so; and, with respect to Harvoni, it has made any approval subject to specific guidelines regarding the severity of an applicant's Hepatitis C or the presence of specific comorbidities. It is undisputed that Petitioner did not meet the guidelines for approval at the time the requests were made and, consequently, the Respondent properly denied Petitioner's requests.

To the extent Petitioner has new or additional information to provide, he and his doctor are free to submit a new prior authorization request for Harvoni along with the new or additional information. With respect to the decisions at issue in this case however, the Department's decision must be affirmed given the information available at the time.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's prior authorization requests for the medication Harvoni.

IT IS, THEREFORE, ORDERED that:

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

Steven

SK/tm

Steven Kibit
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

Petitioner

[redacted]

[redacted]

[redacted]