

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

In the matter of:

██████████

Petitioner,

v

File No. 146403-001

Priority Health Choice, Inc.,

Respondent.

Issued and entered
this 27th day of February 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On February 20, 2015, ██████████ (Petitioner) filed a request with the Director of Insurance and Financial Services for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefits through the Healthy Michigan Plan¹ as a member of Priority Health Choice, Inc. (Priority Health), a health maintenance organization. The Director notified Priority Health of the external review request and asked for the information it used to make its final adverse determination.

The Director received Priority Health's initial response on February 20, 2015. After a preliminary review of the material submitted, the Director accepted the request on February 20, 2015. Priority Health provided additional information on February 23, 2015.

The issue in this external review can be decided by a contractual analysis. The Director reviews contractual issues pursuant to MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

¹ The Healthy Michigan Plan is a State of Michigan program operating under a waiver approved by the Centers for Medicare and Medicaid Services to provide Medicaid coverage to all adults in Michigan with incomes up to and including 133 percent of federal poverty level. Priority Health administers the benefits.

II. FACTUAL BACKGROUND

The Petitioner's benefits are defined in the *Healthy Michigan Plan Certificate of Coverage* (the certificate).²

The Petitioner has chronic hepatitis C genotype 1a. His physician asked Priority Health to cover the prescription drug Harvoni to treat his condition. Priority Health denied the request, saying that Harvoni is not a benefit under the Petitioner's coverage.

The Petitioner appealed the denial of coverage through Priority Health's internal grievance process. At the conclusion of that process, Priority Health affirmed its denial in its final determination dated February 12, 2015. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did Priority Health correctly deny coverage for the prescription drug Harvoni?

IV. ANALYSIS

Petitioner's Argument

On the Petitioner's external review request form it said:

[The Petitioner] is requesting coverage of Harvoni.

██████████, █████, states that the [Petitioner] has stage 4 fibrosis/cirrhosis compensated liver disease. She further states they recommend treatment for his hepatitis C to prevent further progression and decompensation of his liver disease.

Office notes from the Petitioner's visit to his physician in December 2014 said:

The patient is a candidate for treatment for his hepatitis C with Harvoni 12 weeks. He is interested In treatment.

We discussed the new oral treatment for chronic hepatitis C with genotype one infection called Harvoni. It consists of a fixed dose combination of Ledipasvir and Sofosbuvir. Response rates are between 34 and 100%. Treatment duration can be 8 weeks in treatment.

Respondent's Argument

In its final adverse determination, Priority Health's grievance appeal committee gave it

² Approved April 1, 2014.

reasons for denying coverage:

Uphold denial - requested coverage will not be provided. Specifically, Harvoni is not a covered drug in accordance with the Priority Health Healthy Michigan Plan Approved Drug List. In addition, Harvoni has not completed its review process by the State of Michigan Pharmacy & Therapeutics Committee, therefore Harvoni is not on the State of Michigan's Medicaid Fee-For-Service Michigan Pharmaceutical Product List.

The Appeal committee recognizes and understands that Chronic Hepatitis C is a serious medical condition, however; Harvoni has not been included on the Healthy Michigan Plan Approved Drug List.

In a position paper submitted for this external review, Priority Health further explained:

The Certificate of Coverage (COC) that applies to [the Petitioner] informs him that he is entitled to covered services when those services are medically/clinically necessary, as defined by the COC and according to Priority Health medical and behavioral health policies, and when those services are not excluded from coverage. The COC further indicates that only those prescription drugs that are included on the Priority Health Healthy Michigan Plan Approved Drug List are a covered benefit. As noted previously, Harvoni is not on the Priority Health Michigan Plan Approved Drug List nor is it on the State of Michigan's Medicaid Fee-For-Service Michigan Pharmaceutical Product List; therefore, it is not a covered benefit.

Director's Review

The Healthy Michigan Plan is a program of the Michigan Department of Community Health that provides health care benefits to low income individuals. It is subject to both state and federal requirements. In this case, the Healthy Michigan Plan benefits are administered by Priority Health Choice, a health maintenance organization (HMO).

As an HMO, Priority Health is subject to chapter 35 of the Insurance Code, MCL 500.3501 *et seq.* Generally, HMOs that offer prescription drug coverage and limit that coverage to drugs on a formulary must make an exception and cover a nonformulary drug "when a non-formulary alternative is a medically necessary and appropriate alternative." See MCL 500.3406o. However, HMOs that participate in state and federal programs may be exempt from that requirement. Section 3571 of the Insurance Code, MCL 500.3571, says:

A health maintenance organization that participates in a state or federal health program . . . is not required to offer benefits or services that exceed the requirements of the state or federal health program.

The certificate's "Schedule of Benefits" (p. 42) reflects that exemption:

26. Outpatient Prescription Drugs

Prescription drugs are Covered with a generic substitution process. Prescriptions will be dispensed in quantities prescribed by Providers up to a 90-day supply. Prescriptions will be Covered if included on the Healthy Michigan Plan approved drug list. Coverage for some drugs requires prior approval from us, including medications not on our approved drug list and off-label use of Food and Drug Administration approved drugs. [Underlining added]

The Michigan Department of Community Health’s “Michigan Pharmaceutical Product List” identifies the pharmaceutical products that are covered for the Healthy Michigan Plan and the list does not include Harvoni. Since coverage of Harvoni exceeds the requirements of the Healthy Michigan Plan, Priority Health is not required to provide it, even on an exception basis.

The Director finds that Priority Health’s denial of coverage for Harvoni is consistent with the provisions of the certificate and Michigan law.

V. ORDER

The Director upholds Priority Health’s February 12, 2015 final adverse determination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this order may seek judicial review no later than 60 days from the date of this order in the circuit court for the Michigan county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Annette E. Flood
Director

For the Director:



Randall S. Gregg
Special Deputy Director