

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. 148488-001

Molina Healthcare of Michigan,

Respondent.

Issued and entered
this 11th day of July 2015
by Joseph A. Garcia
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On June 24, 2015, ██████████, RN, authorized representative of ██████████ (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 Molina Healthcare of Michigan (Molina), a health maintenance organization. The Director notified Molina of the external review request and asked for the information it used to make its final adverse determination. Molina provided its response on June 30, 2015. After a preliminary review of the material submitted, the Director accepted the request on July 2, 2015. Molina submitted additional information on July 10, 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.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in a certificate of coverage (the certificate) issued by Molina and the Molina Healthcare Formulary. Healthy Michigan Plan

¹ The Healthy Michigan Plan, a program of the Michigan Department of Health and Human Services, provides health care benefits to low-income Michigan residents who do not otherwise qualify for (or are not enrolled in) Medicare or Medicaid. Benefits are administered through Medicaid health plans like Molina.

benefits are also governed by the Michigan Medicaid Provider Manual and other Medicaid regulations.

The Petitioner has chronic hepatitis C genotype 1a. His physician asked Molina to cover the prescription drug Harvoni to treat his condition. Molina denied the request.

The Petitioner appealed the denial through Molina's internal grievance process. At the conclusion of that process, Molina affirmed its denial in a final adverse determination dated June 9, 2015. The Petitioner now seeks a review of Molina's final adverse determination from the Director.

III. ISSUE

Did Molina correctly deny authorization and coverage for the prescription drug Harvoni?

IV. ANALYSIS

Petitioner's Argument

In the request for an external review, the Petitioner's authorized representative wrote:

[The Petitioner] has hepatitis C with cirrhosis and history of jaundice. Patient has a Denver shunt placed for [ascites]. Was treated previously with interferon-based medications without success. [The Petitioner] would benefit from the newer more tolerable medication Harvoni. Without this treatment [the Petitioner's] condition will decline and cause patient additional [and] serious medical problems.

In a letter dated April 30, 2015, Petitioner's physician further explained the medical necessity of Harvoni:

[The Petitioner] tested positive for hepatitis C genotype 1a in 2000. He had a liver biopsy in 2000 that was positive for cirrhosis. A Denver shunt was placed for alleviation of ascites. He was treated for 6 months with an interferon based regime several years ago, however, the infection was not resolved. He also has a history of jaundice. His most recent labs from November 2014 are as follows: HCV pcr: 9888, Hgb 10.7, Hct 35.9, WBC 5.0, platelets 153, ALT 19, AST 35, BUN 16, creatinine L6 and albumin 3.2. Harvoni is his best treatment option at this time. Without this treatment I fear the patient's condition will continue to decline causing additional and serious medical problems. Please approve Harvoni for [Petitioner] as soon as possible so he can begin treatment immediately.

In my clinical judgment, Harvoni therapy would provide significant clinical benefit for [the Petitioner]. Harvoni is medically necessary and appropriate to treat [the Petitioner] in his course of care. I strongly urge you to approve coverage at this time.

Respondent's Argument

In its final adverse determination, Molina told the Petitioner:

Molina Healthcare has reviewed the request for Harvoni and determined that it is not a covered benefit. As an alternative, please consider prescribing medications that are available on the Molina Healthcare Formulary.

Your request was denied based on the **Molina Healthcare Evidence of Coverage Guidelines**.

Director's Review

Molina denied coverage for Harvoni because it is not on its list of covered drugs.² Generally, a health maintenance organization (HMO) like Molina that offers prescription drug coverage and limits that coverage to drugs on a formulary must make an exception and cover a nonformulary drug "when a nonformulary alternative is a medically necessary and appropriate alternative." MCL 500.3406o. However, an HMO that participates in state and federal programs can 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 (pp. 15, 26) references this exemption:

8.2 Limitations

8.2.1 Covered Services are subject to the limitations and restrictions described in Medicaid Program policy manuals and publications and this Certificate.

* * *

Appendix C – Excluded Services & Limitations

Any services, equipment or supplies excluded or limited under the Medicaid Contract are excluded or limited under the Member Agreement, even when recommended by a Primary Care Provider or Participating Provider and/or written on a Plan referral form. . . .

Molina bases its drug coverage on those drugs that must be covered according to its agreement with Medicaid. The Michigan Department of Health and Human Services does not include Harvoni in its list of drugs for beneficiaries of the Health Michigan Plan. Therefore, Molina is not required to provide it, even on an exception basis.

² The formulary does include other drugs to treat hepatitis C.

The Director finds that Molina's denial of coverage for Harvoni is consistent with the terms of the Petitioner's health plan.

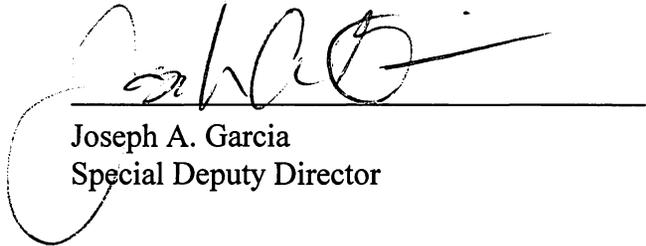
V. ORDER

The Director upholds Molina's June 9, 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.

Patrick M. McPharlin
Director

For the Director:



Joseph A. Garcia
Special Deputy Director