

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

**In the matter of:**

[REDACTED]

**Petitioner,**

**v**

**File No. 149190-001**

**UnitedHealthcare Community Plan,**

**Respondent.**

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**Issued and entered**  
**this 2<sup>nd</sup> day of September 2015**  
**by Randall S. Gregg**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

[REDACTED] (Petitioner) was denied coverage for a prescription drug by his health plan. On August 14, 2015, Andrew Rosenfeld, DO, the Petitioner's authorized representative, filed a request with the Director of Insurance and Financial Services seeking an external review of that denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefits from UnitedHealthcare Community Plan (UHCCP), a health maintenance organization for Medicaid recipients. The Director notified UHCCP of the external review request and asked for the information it used to make its final adverse determination. The Director received UHCCP's response on August 21, 2015, and after a preliminary review of the material submitted, the request was accepted on that date.

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 UHCCP's *Medicaid 2014 Certificate of Coverage* (the certificate).

The Petitioner has chronic hepatitis C. His physician asked UHCCP to cover the prescription drug Harvoni to treat his condition. UHCCP denied the request, saying Harvoni is not covered under the Petitioner's plan.

The Petitioner appealed the denial through UHCCP's internal grievance process. At the conclusion of that process, UHCCP affirmed its denial in a final adverse determination dated July 6, 2015. The Petitioner now seeks a review of that final adverse determination from the Director.

### III. ISSUE

Did UHCCP correctly deny coverage for Harvoni?

### IV. ANALYSIS

#### Petitioner's Argument

In a May 29, 2015, letter to UHCCP that was filed with the external review request, the Petitioner's doctor wrote:

[The Petitioner] is a [REDACTED] year old male who was diagnosed with Chronic Hepatitis C, genotype 1a, not cirrhotic and a viral load of 2,800,000 IU/ml. [He] has never been treated for Hepatitis C and currently is a good treatment candidate. Harvoni was chosen for treatment because studies have proved that there is a 94 - 99% cure rate with only eight weeks of this FDA approved therapy. There are also low rates of relapse after treatment with Harvoni based regimen. The tolerability of this regimen has been found to be better, with fewer adverse events and discontinuations. In addition, it is the first line recommendation for Hepatitis C treatment AASLD guideline.

In conclusion, please reconsider the denial of Harvoni for my patient, [the Petitioner], who diagnosed with Chronic Hepatitis C virus infection. A regimen that includes Harvoni has a greater chance of Sustained Viral Response and little chance of relapse after treatment, and easier to tolerate, therefore, giving us a higher chance of curing Hepatitis C for this patient.

#### Respondent's Argument

In its final adverse determination, UHCCP stated:

. . . At the present time, the State of Michigan Medicaid Program is not covering Harvoni. Harvoni is not presently a covered medication by the Michigan Medicaid program. Your request to approve Harvoni cannot be approved at this time.

UnitedHealthcare Community Plan used criteria policy your Certificate of coverage Section 2.2 and Michigan Medicaid Guidelines.

In a letter dated August 20, 2015, submitted for this external review, UHCCP further explained:

We are a Managed Care Health Plan that serves the Medicaid population in Michigan. As a Medicaid Health Plan (MHP) we provide services based on the Michigan Medicaid agreement and coverage directives.

\* \* \*

UHCCP's Certificate of Coverage states in Article XII / Exclusions and Limitations, Section 12.2:

**12.2.1** Covered Services are subject to the limitations and restrictions described in UnitedHealthcare Community Plan Medicaid Agreement, the Medicaid Program Provider Manuals and Medicaid program bulletins and other directives.

The medication in question, Harvoni, is currently not being covered by Michigan Medicaid, and therefore is excluded from UHCCP's formulary and is not included in Article 9 / Covered Services, Section 9.1 which states:

**9.1** A Member is entitled to the services, equipment and supplies specified in Section 9.2 when they are:

**D.** Consistent with UnitedHealthcare Community Plan obligations to provide such services pursuant to the Medicaid Agreement.

Based upon the above, the denial of the medication Harvoni remains in effect.

### Director's Review

The certificate has this provision regarding prescription drugs (p. 28): "Legend and non-legend drugs, when included in UnitedHealthcare Community Plan most current drug formulary, are a Covered Service . . . ." Harvoni is not on UHCCP's formulary.

Generally, health maintenance organizations that offer prescription drug coverage and limit that coverage to drugs on a formulary must make exceptions from the formulary limitation and provide alternative nonformulary drugs when they are medically necessary and appropriate. See MCL 500.3406o.

However, the nonformulary exception rule does not apply in this case. UHCCP provides health care benefits for Medicaid, a state health program. Section 3571 of the Insurance Code 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. MCL 500.3571.

UHCCP must provide those benefits included in its contract with the State of Michigan. The State of Michigan does not require UHCCP to include Harvoni on its drug formulary and UHCCP has not elected to cover it. Therefore, the Director finds that UHCCP correctly denied the Petitioner's request to cover Harvoni.

**V. ORDER**

The Director upholds UnitedHealthcare Community Plan's July 6, 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 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:

A handwritten signature in black ink, appearing to read 'R. Gregg', is written over a horizontal line.

Randall S. Gregg  
Special Deputy Director