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Director of Global Operations,

CLINUVEL Group

Sent by e-mail only: xxxxxxxxxxxxxxx

26 April 2023

Dear xxxxxxxxxxxxxxx

**Re: Final Evaluation Determination— AFAMELANOTIDE FOR ERYTHROPOIETIC PROTOPORPHYRIA (EPP) [ID927]**

Thank you for your letter of 18 April 2023 responding to my initial scrutiny views. This is my final decision on initial scrutiny.

Thank you for clarifying in paragraph 1.3 of your letter that CLINUVEL does not assert legal privilege over your appeal letter of 24 March 2023. Thank you also for confirming that CLINUVEL claims confidentiality only over material redacted from paragraphs 4.3 and 9.17 of that letter, and material redacted from CLINUVEL’s letters of 16 March and 14 July 2022 that were annexed to your appeal letter. NICE has confirmed to me that it is content with those redactions. I note that your letter of 18 April 2023 is also marked ‘CONFIDENTIAL’. Please can you confirm that CLINUVEL does not object to the publication of that letter on NICE’s website, or alternatively, if CLINUVEL asserts confidentiality over all or any part of that letter, please provide the reasons for that assertion.

I confirm my decision below in relation to each ground raised in your appeal letter. I consider the ground 1(a) points followed by the ground 1(b) appeal points and then the ground 2 points.

***Ground 1(a): In making the assessment that preceded the recommendation, NICE has failed to act fairly***

**Appeal point 1(a).1: The procedure followed by the Committee was not sufficiently transparent**

I confirm my view that this is a valid appeal point and refer it to the Appeal Panel.

**Appeal point 1(a).2: The requirement of ‘conscientious consideration’ was not met**

Having considered the additional arguments made in your letter of 18 April 2023, I remain of the view that this appeal point should not proceed to an oral hearing.

CLINUVEL’s further submissions in that letter focus first on NICE’s approach to its duties under the Equality Act 2010. You say that these submissions evidence the Committee’s unwillingness to ‘seriously contemplate a change of course’. However, I have confirmed that CLINUVEL’s appeal point challenging NICE’s compliance with its duties under the Equality Act 2010 (1(b).1) is a valid appeal point, and so the Appeal Panel will consider NICE’s compliance with those duties. CLINUVEL also submits that the Committee’s approach to different types of quantitative and qualitative evidence also evidences an unwillingness to change course. Again, however, I have confirmed that CLINUVEL’s appeal points challenging the Committee’s approach to evidence, both under fairness (1(a).1) and reasonableness (2.4), are valid appeal points. The points made under this proposed appeal point 1(a).2 are well covered across referred appeal points 1(a).1, 1(b).1 and 2.4. I am therefore satisfied that this appeal point would not anything of substance as a freestanding appeal point.

**Appeal point 1(a).3: NICE acted unfairly by reason of delay**

I confirm my view that this is a valid appeal point and refer it to the Appeal Panel.

***Ground 1(b): In making the assessment that preceded the recommendation, NICE has exceeded its powers***

**Appeal point 1(b).1: NICE breached its duties under the Equality Act 2010**

Having considered the additional arguments made in your letter of 18 April 2023, I confirm that this is valid appeal point, both in respect of the duty to make reasonable adjustments, and the duty to have regard to the need to advance equality of opportunity.

***Ground 2:******the recommendation is unreasonable in the light of the evidence submitted to NICE***

**Appeal point 2.1: The Committee’s decision-making did not follow the relevant NICE Principles**

I confirm my view that the point made in paragraph 9.7 of the CLINUVEL appeal letter is a valid appeal point and refer it to the Appeal Panel. I note that CLINUVEL may seek to discuss the points made in paragraphs 9.8 and 9.9 of its appeal letter in support of that appeal point. It will be for the Chair of the Appeal Panel to ensure that submissions made by all parties during the oral hearing of the appeal are focused to those relevant to the appeal point under consideration.

**Appeal point 2.2: It was unreasonable for the Committee to conclude that afamelanotide could not be recommended for funding on the basis of the ICERs falling outside the normal range in the HST Process Guide**

I confirm my view that this is a valid appeal point and refer it to the Appeal Panel.

**Appeal point 2.3: The reasons in the FED for refusing to recommend an MAA were illogical**

I confirm my view that this is a valid appeal point and refer it to the Appeal Panel.

**Appeal point 2.4: The emphasis placed by the Committee and NICE on the importance and usefulness of a vignette study to inform the QALY was irrational**

I confirm my view that this is a valid appeal point and refer it to the Appeal Panel.

**Appeal point 2.5:** **The failure to place any (or any adequate) weight on treatment adherence data was irrational**

Having considered the additional arguments made in your letter of 18 April 2023, I agree that this is a valid appeal point.

**Appeal point 2.6:** **The failure to place any (or any adequate) weight on data from post-authorisation and observational studies was irrational**

I confirm my view that this is not a valid free-standing appeal point, as it does not raise issues that fall outside the scope of appeal point 2.4, which I have referred to the Appeal Panel.

 Conclusion

Therefore the valid appeal points are:

* Appeal point 1(a).1; The procedure followed by the Committee was not sufficiently transparent.
* Appeal point 1(a).3: NICE acted unfairly by reason of delay
* Appeal point 1(b).1: NICE breached its duties under the Equality Act 2010
* Appeal point 2.1: The Committee’s decision-making did not follow the relevant NICE Principles
* Appeal point 2.2: It was unreasonable for the Committee to conclude that afamelanotide could not be recommended for funding on the basis of the ICERs falling outside the normal range in the HST Process Guide
* Appeal point 2.3: The reasons in the FED for refusing to recommend an MAA were illogical
* Appeal point 2.4: The emphasis placed by the Committee and NICE on the importance and usefulness of a vignette study to inform the QALY was irrational
* Appeal point 2.5: The failure to place any (or any adequate) weight on treatment adherence data was irrational

NICE shares the valid appeal grounds of each appellant with the other appellants to assist with preparation for the hearing. These will be shared with you in the appeal papers.

NICE will be in contact with you regarding the administration of the appeal, which will be held orally.

Yours sincerely

Dr Mark Chakravarty

Lead Non-Executive Director for Appeals & Vice Chairman

National Institute for Health and Care Excellence