From:

Sent: 21 August 2008 19:58

To:

Cc:

Subject: Final Appraisal Determination: Adalimumab, Etanercept and Infliximab for the treatment of rheumatoid arthritis after failure of a previous TNF-a Inhibitor

Importance: High

21 August 2008

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Dear

Final Appraisal Determination: Adalimumab, Etanercept and Infliximab for the treatment of rheumatoid arthritis after failure of a previous TNF-α Inhibitor

Thank you for your letter of 1 August, lodging Wyeth's appeal against the above Final Appraisal Determination (FAD).

Introduction

The Institute's appeal procedures provide for an initial scrutiny of points that an appellant wishes to raise, to confirm that they are least arguably within the permitted grounds of appeal ("valid"). The permitted grounds of appeal are:

- Ground 1: The Institute has failed to act fairly and in accordance with its published procedures as set out in the Institute's Guide to the Technology Appraisal Process.

- Ground 2: The Institute has prepared a FAD which is perverse in the light of the evidence submitted.

- Ground 3: The Institute has exceeded its powers.

This letter sets out my initial view of the points of appeal you have raised: principally whether they fall within any of the grounds of appeal, or whether further clarification is required of any point. Only if I am satisfied that your appeal points contain the necessary information and arguably fall within any one of the grounds will your appeal be referred to the Appeal Panel.

You have the opportunity to comment on this letter in order to elaborate on or clarify any of the points raised before I may my final decision as to whether each appeal point is referred on to the Appeal Panel.

Initial View

You appear to have raised approximately 20 points of appeal (and not 9, as stated in your letter), 11 under Ground 1 (1.3, 2.1, 2.2, 2.4 (part), 3 (part), 4, 5 (part), 6, 7 (part), 8 (part) and 9 (part)) and 9 under Ground 2 (1.1, 1.2, 2.3, 2.4, 3 (part), 5 (part), 7 (part), 8 (part) and 9 (part)).

I shall try to deal with each Ground in turn, but I am afraid I have found the way in which you have presented your appeal points extremely confusing. If you feel I have overlooked or misunderstood any appeal point I would be grateful if you could point this out. I would also be grateful, if your appeal is to proceed, if the valid appeal points could be re-presented in a revised appeal notice, with each point as we have identified it numbered and all the ground one points grouped together, all the ground two points grouped together and so on. This will help the appeal panel understand and deal fairly with your appeal.

Ground 1

1.3 I consider this appeal point to be valid.

2.1 I am not sure that I understand this point. I do not agree with the opening premise "an examination of the minimum [clinical?] effectiveness that would be required for a second TNF-a inhibitor to be marginally cost effective should have been conducted...". This seems to me to put the exercise backwards. The evidence for the clinical effectiveness of use of a second TNF-a inhibitor is what it is. The fairness and rationality of the committee's use of that evidence in reaching a conclusion on cost effectiveness can be scrutinised, (if there is some ground to suppose they may have been in error). But they cannot be criticised for not having worked backwards from a desired cost effectiveness figure to the minimum clinical effectiveness which would deliver that figure. Apart from any other objection to this, the committee does not have a desired cost effectiveness figure in mind. As it stands I am not minded to agree this is a valid ground of appeal.

2.2 and 2.3 I regard the alleged failure to incorporate offset costs to fall more appropriately within Ground 2 than Ground 1 in that it is directed more towards perversity than procedural unfairness. (And I think I am right that this is the thrust of your point 2.3). I do not think this can be said to be procedurally unfair but I do agree it could be argued to be perverse and therefore would be minded to allow your point 2.3, but not 2.2, to proceed.

2.4 This paragraph is especially confusing. There seem to be three grounds of appeal. The first is that undue weight has been given to clinical opinion. Although the weight to be given to evidence is a matter for the decision maker, I am minded to allow this complaint to proceed on the basis that you will argue that perverse weight has been given (ie under ground 2).

The second is that changing the discount rate constitutes a failure to act fairly and a breach of published procedures. I consider this complaint to be valid under ground 1.

The third is that changing the discount rate is perverse. I am not sure whether this relates to the refusal to consider your additional evidence or not. I am assuming it does not, but I consider this complaint to be valid, principally on the ground of arguable inconsistency.

3 This covers both a Ground 1 challenge and a Ground 2 challenge. My initial view on the Ground 1 challenge is that the Guide to the Methods of Technology Appraisal is not a mandatory part of the Institute's published procedures and that this challenge is therefore invalid, unless you can show some resulting unfairness (for example confusion in your minds as to how to engage with the appraisal).

I agree the challenge should proceed under Ground 2.

4, 5 and 6 I agree there are valid ground 1 appeal points here, but am unclear as to what or how many there are. I suggest there are two appeal points: that Rituzimab should not have been added as a comparator without consultation (broadly your para 4), and that if Rituximab was added, the Institute should have accepted your additional data (broadly your para 6). I am not sure whether your para 5 is really a ground of appeal in its own right, or whether it is argument in support of and/or consequences said to flow from the refusal to receive new evidence complained of in your para 6. Perhaps you could address this in your reply to this letter and I will take a final decision on that point.

7 I note the procedural history leading up to the decision to split this appraisal, namely that an appeal against an earlier FAD succeeded, but only as regards sequential use of these drugs. It appears that the Institute took the view that the (essentially positive) recommendations for first use should be published at once.

I do not think that that can be said to be arguably unfair or perverse in itself. It had the surely desirable outcome that patients could enjoy the benefits of a positive recommendation for first use at once, without having to wait for an appraisal of subsequent use to be completed. If it is arguable that a result has been

some specific unfairness or perversity then that can be considered as a specific point (for example your point on discount rates above). But I am not minded to allow this complaint to proceed under either ground 1 or ground 2.

8 This covers both a Ground 1 challenge and Ground 2 challenge. My initial view on the Ground 1 challenge is that the Guide to the Methods of Technology Appraisal is not a mandatory part of the Institute's procedures and that this challenge is therefore invalid.

9 This covers both a Ground 1 challenge and Ground 2 challenge. My initial view on the Ground 1 challenge is that the Guide to the Methods of Technology Appraisal is not a mandatory part of the Institute's procedures and that this challenge is therefore invalid.

Ground 2

1.1 The Appraisal Committee can only take into account the data before it at the time of the appraisal. You acknowledge that the data to which you refer does not fall into this category and I therefore regard this appeal point as invalid.

1.2 I consider this appeal point to be valid.

2.3 I consider this appeal point to be valid, provided that it is taken as a single appeal point with appeal point 2.2 (see above under Ground 1).

2.4 As noted above I agree the two perversity challenges raised in this paragraph are valid.

3 This covers both a Ground 1 challenge and a Ground 2 challenge. I do not regard your Ground 1 challenge to be valid for the reasons given above. Provided that the data you refer to is not the BSRBR data also referred to in your para 1.2, I do, however, consider your Ground 2 challenge to be valid.

5 This appears to be a bald assertion of perversity tacked onto a Ground 1 challenge. Unless you are able to be more specific, I do not presently regard it as valid

7 For the reasons given above I do not presently regard this complaint as valid per se, although some of the consequences of the split can be looked at.

8 This appears to be a bald assertion of perversity tacked onto a Ground 1 challenge. Unless you are able to be more specific, I do not regard it as valid.

9 This appears to be a bald assertion of perversity tacked onto a Ground 1 challenge. Unless you are able to be more specific, I do not regard it as valid.

Preliminary Conclusion

As I have concluded some at least of your grounds of appeal are valid, they will go forward to be considered at an appeal hearing. I would be happy to consider any further comments you may wish to make on the points which I am minded to rule as invalid, and any correspondence should be sent to the Institute within two weeks of the date of this letter. Within the same timescale, you should please resubmit a redrafted appeal notice, with each appeal point given its own number and divided into appeals under ground one and appeals under ground two. If you want to expand on or explain the points that I have found unclear that would also be helpful.

Yours sincerely

Mark Taylor

Appeals Committee Chair

National Institute for Health and Clinical Excellence