

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2009-24503 CL
Case No. ██████████
Load No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq., following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ appeared as Authorized Representative for ██████████ (Appellant).

██████████, represented the Department of Community Health (Department). Also in attendance on behalf of the Department was ██████████ for the ██████████.

ISSUE

Has the Department properly denied Appellant coverage for incontinent wipes?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence presented, I find, as material fact:

1. Appellant is an adult Medicaid beneficiary. He is blind and home-bound, but receives no therapies, and is self-toileting. (*Exhibit 1, p. 5*)
2. On ██████████, the Department's contracted incontinence supplier, issued to the Appellant an Adequate Action Notice informing him that his request for incontinent wipes was denied. This decision was based on a statement provided by the Appellant on ██████████, that he is home-bound.
3. On ██████████, the Appellant filed his Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Section 2.19 Incontinent Supplies; Standards of Coverage

Incontinent wipes are covered when necessary to maintain cleanliness outside of the home.

*Michigan Department of Community Health
Medicaid Provider Manual
Medical Supplier
Version Date: April 1, 2009;
Page 40*

A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfies that burden must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

Current policy on this issue is clear. Incontinent wipes are covered only to maintain cleanliness outside of the home. The Appellant's representative acknowledges the request for incontinent wipes is designed for use when the Appellant is not at home; she further acknowledges the Appellant is homebound, and that the wipes would be utilized for convenience purposes only.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department has appropriately denied the Appellant's request for incontinent wipes.

[REDACTED]
Docket No. 2009-24503 CL
Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 8/13/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules for the Department of Community Health will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.