

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

[REDACTED]

Appellant

_____ /

Docket No. 2009-24881CL

[REDACTED]

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. [REDACTED] Appellant's mother/legal guardian, appeared and testified on behalf of the Appellant. [REDACTED] represented the Department. [REDACTED] and [REDACTED]; and [REDACTED], appeared and testified as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional diaper liners and wipes which exceed the monthly quantity limit?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a 31 year-old male Medicaid beneficiary who was diagnosed with severe mental retardation, cerebral palsy, IgA deficiency, a sleep disorder, convulsions, and incontinence. (Exhibit 1 Page 13).

2. At all times relevant to this matter, Appellant was approved for 300 double liners and two boxes of wipes per month. (Exhibit 1)
3. On March 7, 2008, the Department received a completed Request For Letter of Medical Necessity: Off Contract Product & OverQuantity of Product from Appellant's physician, which indicates that 300 diaper liners are enough. (Exhibit 1, page 14)
4. Appellant's physician sent the Department a letter, dated October 21, 2008, stating that Appellant needs bed incontinence liners at 600 per month. (Exhibit 1, page 13)
5. Appellant's mother requested 600 double incontinence liners and 4 boxes of baby wipes per month.
6. The Department sent Appellant's physicians letters, stating that the Department covers up to 300 single diaper liners per month, and the request for 600 double diaper liners (1200 single liners) exceeds Program coverage; the 300 double diaper liners that Appellant was approved for are an exception to the Incontinent Program contract; a specific medical reason must be provided to support the medical need for the additional 300 double diaper liners (600 single liners) per month that was requested; and the Program covers 100 wipes per month. (Exhibit 1, pages 11 & 15-19)
7. On June 4, 2009, the Department received Appellant's Request for Hearing, protesting the denial of 600 incontinence liners and 4 boxes of baby wipes per month.

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.

New Department policy regarding Medicaid covered incontinent supplies went into effect on April 1, 2005. The new policy appeared first in the form of a MSA Bulletin and was incorporated into the Medicaid Provider Manual on April 1, 2005, where it remains currently.

The Department policy on pull-on brief coverage, as addressed in the MDCH Medicaid Provider Manual:

2.19 Incontinent Supplies

Incontinent supplies are items used to assist individuals with the inability to control excretory functions.

The type of coverage for incontinent supplies may be dependent on the success or failure of a bowel/bladder training program. A bowel/bladder training program is defined as instruction offered to the beneficiary to facilitate:

- Independent care of bodily functions through proper toilet training.
- Appropriate self-catheter care to decrease risk of urinary infections and/or avoid bladder distention.
- Proper techniques related to routine bowel evacuation.

Diapers, incontinent pants, liners, and belted/unbelted undergarments without sides are covered for individuals age three or older if both of the following applies:

- A medical condition resulting in incontinence and there is no response to a bowel/bladder training program.
- The medical condition being treated results in incontinence, and beneficiary would not benefit from or has failed a bowel/bladder training program.

Pull-on briefs are covered for beneficiaries age 3 through 20 when there is the presence of a medical condition causing bowel/bladder incontinence, and one of the following applies:

- The beneficiary would not benefit from a bowel/bladder program but has the cognitive ability to independently care for his/her toileting needs, **or**
- The beneficiary is actively participating and demonstrating definitive progress in a bowel/bladder program. (Emphasis added.)

Pull-on briefs are covered for beneficiaries age 21 and over when there is the presence of a medical condition causing bowel/bladder incontinence and the beneficiary is able to care for his/her toileting needs independently or with minimal assistance from a caregiver. **(per bulletin MSA 05-12 effective 4/1/05)**

Continued Coverage for Pull-On Briefs: Pull-on briefs are considered a short-term transitional product that requires a reassessment every six months. The assessment must detail definitive progress being made in the bowel/bladder training. Pull-on briefs covered as a long-term item require a reassessment once a year. Documentation of the reassessment must be kept in the beneficiary's file. (per bulletin MSA 05-12 effective 4/1/05)

Continued Coverage for Pull-On Briefs: Pull-on briefs are considered a short-term transitional product that requires a reassessment every six months. The assessment must detail definitive progress being made in the bowel/bladder training. Pull-on briefs covered as a long-term item require a reassessment once a year. Documentation of the reassessment must be kept in the beneficiary's file.

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

Intermittent catheters are covered when catheterization is required due to severe bladder dysfunction.

Hydrophilic-coated intermittent catheters are considered for individuals that have Mitrofanoff stomas, partial stricture or small, tortuous urethras.

Disposable underpads are covered for beneficiaries of all ages with a medical condition resulting in incontinence.

Documentation must be less than 30 days old and include the following:

- Diagnosis of condition causing incontinence (primary & secondary diagnosis).
- Item to be dispensed.
- Duration of need.
- Quantity of item and anticipated frequency the item requires replacement.
- For pull-up briefs, a six-month reassessment is required.

Diapers and Pull-on Briefs- For a beneficiary using diapers and pull-on briefs, the combined total quantity of these items cannot exceed 300 per month.

Diapers of Different Sizes- For a beneficiary using a combination of different sized diapers, the total quantity must not exceed 300 per month.

MDCH Medicaid Provider Manual, Medical Supplier Section, effective July 1, 2009.

Appellant was approved for 300 **double** liners (equal to 600 **single** liners) and two boxes of wipes per month. The Department established that Medicaid beneficiaries who are eligible for diaper liners and incontinent wipes are entitled to a monthly quantity limit of 300 single diaper liners per month and 100 wipes-two boxes of 50 wipes. The Department asserts that Appellant is already receiving twice as many liners as the maximum allowed, and he is receiving the maximum amount of wipes. Further, the Department asserts that it did not receive documentation to establish a need for additional liners and wipes beyond what Appellant was approved for.

Appellant's mother argued that Appellant is handicapped, severely, and requires additional incontinence supplies. She stated that Appellant's doctor has recommended that Appellant receive 600 incontinence liners per month in order to maintain his current quality of care, and the Department has not been receptive to increasing the incontinence supplies even though she has complained numerous times.

This Administrative Law Judge must uphold the Department's denial. Appellant's mother failed to provide the necessary documentation to establish that **at the time of the Department's eligibility determination**, she submitted documentation which establishes that it is medically necessary for Appellant to receive the additional incontinent supplies she requested. The medical documentation that the Department received from Appellant's physician does state that Appellant needs 600 incontinent liners per month. The 300 double liners are equal to 600 single liners per month. The documentation that the Department received at the time of its eligibility determination fails to establish that it is medically necessary for Appellant to receive additional wipes beyond the maximum amount allowed.

During the hearing, Appellant's mother submitted additional verification from Appellant's physicians to establish Appellant's need for additional incontinent supplies. Appellant was informed at the hearing that she can submit this verification along with another request for the additional incontinent supplies to the Department. However, the Department made the correct eligibility determination based on documentation and information that available at the time relevant to this matter.

[REDACTED]
Docket No. 2009-24881 CL
Hearing Decision & Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's request for additional diaper liners and incontinent wipes which exceed the monthly quantity limit.

IT IS THEREFORE ORDERED that

The Department's decision is **AFFIRMED**.

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 8/19/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.