

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2009-25432 CL
Case 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, appeared on behalf of the Appellant. ██████████ represented the Department. ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of pull-on briefs?

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 an ██████████ woman with Parkinson's Disease. (Exhibit 1, Page 6).
2. The Appellant is a Medicaid beneficiary.
3. Prior to ██████████ Appellant was authorized to receive pull-on briefs each month. (Exhibit 1, Page 9).
4. On ██████████, a nursing assessment was conducted as a result of a request for authorization of Appellant's pull-on briefs. (Exhibit 1, Page 9).

5. On [REDACTED], the Department sent Appellant an Advance Action Notice that the pull-on briefs “shall not be authorized,” effective [REDACTED], because “Documentation submitted does not support need for quantity requested.” (Exhibit 1, Pages 5, 8).
6. On [REDACTED] the Department received Appellant’s Request for Hearing. (Exhibit 1, Pages 4-7).

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.

The Department policy regarding coverage of incontinence products, including pull-on briefs, is addressed in the MDCH Medicaid Provider Manual (MPM):

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.

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. (Emphasis added.)

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 or less frequently as determined by MDCH.

Documentation of the reassessment must be kept in the beneficiary's file.

MDCH Medicaid Provider Manual, Medical Supplier Section, July 1, 2009, Pages 39-40. (Exhibit 1, pp 10-11).

The Department's witness testified that during the ██████████, telephone assessment, the nurse assessor learned that the Appellant is "...not aware of need to urinate or have BM most of time...due to Parkinson's Disease (Appellant) has 24 hour caregivers..." The Department's witness further testified the nurse assessor determined that a letter from Appellant's doctor, describing the client's mental status and ability to participate in toileting care, was needed.

The Appellant's representative/daughter testified that Appellant could stand and hold her walker with one hand while pulling up a pull-on brief with her other hand. The Appellant's representative/daughter said that one reason for the discrepancy between her statements in the request for hearing and during the hearing, and the written statements of the nurse assessor recording the ██████████ telephone nursing assessment was "timing," because her mother was taking a medication that caused loose bowels at the time of the ██████████ assessment. The Appellant's representative/daughter stated that as a matter of dignity Appellant should receive pull-on briefs instead of diapers.

The Department's witness testified that in order for Medicaid to pay for pull-on briefs, the Department's policy criteria must be met, including presence of medical condition causing incontinence (incontinence not as a result of a mental health condition), and the beneficiary is able to care for her toileting needs independently or with minimal assistance. The Department's witness testified that although a letter was requested from Appellant's physician describing her mental status and ability to participate in toileting care, a letter from Appellant's physician was never received.

The Appellant's representative/daughter said she would obtain the requested information in a letter from Appellant's doctors to submit with a new request for pull-on briefs.

The evidence in this case supports the finding that at the time of the denial determination the Appellant did not meet the Department's policy criteria for Medicaid coverage of pull-on briefs and no additional information was provided from Appellant's physician to establish whether she met the Department's policy criteria for Medicaid coverage of pull-on briefs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's denial of coverage for pull-on briefs was in accordance with Department policy criteria.

IT IS THEREFORE ORDERED that:

The Department's decisions are AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed 8/6/2009

***** 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.