

**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. 2009-25473 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 _____, _____. Appellant's mother/legal guardian appeared and testified on behalf of the Appellant. _____, Appeals Review Officer, represented the Department. _____, Michigan Department of Community Health (MDCH), Incontinence Supply Contract Manager, appeared and testified 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 a _____ with a medical history of developmental delay, encephalopathy, metabolic disorder, ADHD, and urinary and bowel incontinence. (Exhibit 1, Page 7)
2. Appellant was enrolled in an Early Childhood Special Education Program. (Exhibit 1, Page 7)
3. Appellant had been approved for pull-on briefs. (Exhibit 1)

4. In [REDACTED], in response to a request for pull-on briefs, a required nursing assessment of Appellant was completed. (Exhibit 1 Pages, 7-9)
5. According to a letter received on [REDACTED], from a [REDACTED]: Appellant will tell the school when he has to go to the bathroom, however, it is after he has gone already; and Appellant does not have bowel movements in the toilet and will urinate in the toilet on occasion. (Exhibit 1, Page 6)
6. Information from the assessment was forwarded to the Department who reviewed and denied the request for pull-ons briefs on the basis that Appellant has not made any definitive progress in a bowel/bladder program.
7. On [REDACTED], an Advance Action Notice was sent to Appellant, stating that the request for pull-ons was denied. (Exhibit 1 Page 4)
8. On [REDACTED] the Department received Appellant's Request for Hearing, protesting the denial.

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 is addressed in the MDCH Medicaid Provider Manual and states the following:

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.

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.

Intermittent catheters with insertion supplies are covered for beneficiaries who have a chronic urinary dysfunction for which sterile technique is clinically required.

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-on briefs, a six-month reassessment is required.

MDCH Medicaid Provider Manual, Medical Supplier Section, July 1, 2009, Page 40.

Appellant's mother is protesting the Department's determination that Appellant no longer meets the above eligibility criteria for pull-ons. According to Appellant's mother, Appellant's has made progress with toileting, and he has bowel movements in the toilet 100% of the time.

The Department properly denied the request for pull-on briefs. At review for the continuation of pull-ons, the Department received verification from an elementary school teacher, stating that: Appellant will tell the school when he has to go to the bathroom, however, it is after he has gone already; and Appellant does not have bowel movements in the toilet and will urinate in the toilet on occasion. The Department established that Appellant does not meet the above eligibility criteria for pull-on briefs because he has not demonstrated or verified any definitive progress in a bowel/bladder program. Therefore, the denial of continued coverage for pull-on briefs must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied coverage of pull-on briefs.

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: 9/2/2009

***** 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.