

**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.** 2009-26810 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 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 genetic disorder that causes muscular atrophy. (Exhibit 1, p. 6)
2. Appellant had been approved for pull-on briefs. (Exhibit 1)
3. On ██████████, the Contractor for the State of Michigan Diapers and Incontinent Supplies Program, received a prior authorization request for the continuation of pull-on briefs on behalf of Appellant. (Exhibit 1 Page 2)

4. Pursuant to the contract with State of Michigan, beneficiaries ages 3-20 who are receiving pull-ons and are in a bowel and bladder training program must be assessed every 6 months by the Contractor's nursing staff or to be determined by the Department; and beneficiaries who are in school are required to submit a school letter for all pull-on reviews detailing the toilet training program and success rate. (Exhibit 1, Page 7)
5. On ██████████, the Contractor, ██████████ requested a school letter, but it was not received by ██████████. (Exhibit 1, Page 6)
6. On ██████████, the Department sent Appellant notice that the request for pull-ons was denied. (Exhibit 1 Page 4)
7. On ██████████, 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. However, the Department properly denied the request for the continuation pull-on briefs. The Department never received verification that Appellant has been demonstrating definitive progress in a bowel/bladder program. In addition, Appellant's mother was unable to establish that the needed verification was submitted to the Department in a timely manner or establish that Appellant has been making definitive progress in a bowel/bladder program. Therefore, the denial of continued coverage for pull-on briefs must be upheld. Appellant has a right to reapply for pull-ons and submit the verification needed for approval.

## **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.

  
Docket No. 2009-26810 CL  
Decision and Order

**IT IS THEREFORE ORDERED** that

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

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

cc:



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.