

**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.** 2009-28310 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., following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ appeared as Authorized Representative for her son, ██████████ (Appellant). Also appearing as a witness for the Appellant was his community mental health case worker and therapist ██████████.

██████████, Appeals Review Officer, represented the Department of Community Health (Department). Also in attendance on behalf of the Department was ██████████, Contract Manager for the Department's Diaper and Incontinence Supplies Program.

**ISSUE**

1. Has the Department properly denied Appellant coverage for pull-ons?
2. Has the Department properly denied Appellant coverage for diapers?
3. Has the Department properly denied Appellant coverage for wipes?

**FINDINGS OF FACT**

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

1. Appellant is a minor Medicaid beneficiary. He is diagnosed with Mood Disorder NOS, Attention Deficit Hyperactivity Disorder and Asberger's Syndrome. (*Exhibit 1; p. 7*)

2. On [REDACTED], a telephone nursing assessment prior authorization request was received by [REDACTED], the contractor for the State of Michigan Diapers and Incontinent Supplies Program. The request was for diapers, pull-ons and wipes. The request was reviewed and disapproved on the basis that the information provided did not support the coverage for diapers, pull-ons or wipes, as the Appellant appears to suffer from nocturnal enuresis.
3. The Appellant is incontinent of bladder and bowel, and has been receiving 240 diapers per month since [REDACTED]. On average, the Appellant gets up 2-3 times during the night to use the bathroom, and is successful 4 out of 7 days per week. During daytime hours, while attending school, he enjoys 95% toileting success rate, but has days when he does not like toileting and will sit alone, not wanting to be bothered. (*Exhibit 1; p. 8*)
4. The Appellant is often out with his family. He needs more wipes while at home than while out with the family. (*Exhibit 1; p. 8*) He wakes up dry 4 out of 7 days per week, has bowel movements 1 to 2 times per day, and goes in the toilet approximately 90% of the time. (*Exhibit 1; p. 9*)
5. On [REDACTED], 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.

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**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 ages 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 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.

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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).

Thus, the Appellant and/or his representative (here, his mother) must demonstrate, by a preponderance of the evidence, that he meets current criteria for pull-ons, wipes and diapers.

Incontinent wipes are covered only to maintain cleanliness outside of the home. The Appellant's mother acknowledges the request for incontinent wipes is designed for use when the Appellant is not at home.

Based on the evidence presented, I conclude the Appellant is ineligible for incontinent wipes.

As stated above, diapers are covered where there exists a medical condition resulting in incontinence and there is no response to a bowel/bladder training program, or the medical condition being treated results in incontinence, and the beneficiary would not benefit from or has failed a bowel/bladder training program. Here, the evidence adduced at hearing indicates the Appellant is participating in a bowel/bladder training program and is making progress.

Based on the evidence presented, I conclude the Appellant is ineligible for diapers.

Pull-ons are covered for beneficiaries ages 3 through 20 when there is the presence of a medical condition causing bowel/bladder incontinence, and either 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.

The Department contends that autism is not a medical problem, but rather, a mental illness. This assertion is without merit. Autism is one of a group of serious developmental problems called autism spectrum disorders (ASD) that appear in early childhood — usually before age 3. Though symptoms and severity vary, all autism disorders affect a child's ability to communicate and interact with others. (*Mayoclinic.com*)

However, the record is devoid of evidence that autism is the sole cause of the Appellant's continuing bowel and bladder incontinence, and/or that his other medical conditions are causing this problem as well. The Appellant bears the burden of establishing this link. Having failed to do so, I must conclude the Appellant is ineligible for pull-ons at this time.

[REDACTED]  
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**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 diapers, pull-ons and wipes.

**IT IS THEREFORE ORDERED** that:

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

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

cc:

[REDACTED]

Date Mailed: 9/18/2009

**\*\*\* 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.