

**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. 2009-28761CL
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 ██████████. ██████████, represented the Appellant. She had no other witnesses. ██████████, appeals review officer, represented the Department. Her witness was ██████████ Medicaid analyst/MDCH.

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 ██████████ Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with Angelman Syndrome, seizures, urinary and bowel incontinence. He is alert and oriented to people and place. (Department's Exhibit A, p. 8)
3. The Appellant attends ██████████. Included in his educational component is toilet training. According to school reviewer (██████████)

██████████) the Appellant has not been successful with toilet training owing to an inability to integrate and understand sensory information. (Department's Exhibit A, p. 7)

4. On ██████████, a prior authorization request for the continuation of pull-on briefs was received by the Department. (Department's Exhibit A, p. 2)
5. On ██████████, the Appellant was advised on the denial of the requested pull-on briefs and further informed of his right to appeal. (Department's Exhibit A, p. 5)
6. The request for pull-on briefs was reviewed by OMA staff pediatrician. ██████████. ██████████ MD, who concurred with the analyst's denial owing to "no definitive progress. ...[N]o decrease of product use." (Department's Exhibit A, p. 6)
7. On ██████████, the instant appeal was received by the State Office of Administrative Hearings and Rules (SOAHR). (Appellant's Exhibit #1)

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 for pull-on brief coverage is addressed in the Medicaid Provider Manual:

[] 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 supplied)

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.

Medicaid Provider Manual (MPM) Medical Supplier, July 1, 2009, page 40

The Department witness testified that the Appellant is not successful in meeting the Medicaid program requirements for continued authorization of pull-on briefs as he demonstrated neither definitive progress in a bowel/bladder program, nor decreased product use. This conclusion was shared, on review, by MDCH pediatrician, [REDACTED], MD.

Required documentation from the Appellant's school confirmed a lack of success with the toileting program. See Department Exhibit A, 7.

The Appellant's representative argued that the Appellant had made "tons of progress." Her testimony did not identify bowel/bladder program achievement, but rather focused on the Appellant's ability to dress himself and other equitable complaints about the Medicaid program.

While the testimony documented that the Appellant rips diapers apart, but is never the less able to raise and lower pull-ons, there was no recent demonstration of program compliance.

The evidence provided by the Department clearly established that the Appellant has made no progress in his school based toilet training program. The Appellant's representative has failed to provide any evidence that the Appellant has made definitive improvement [as required under the MPM] concerning the toileting program. Irrespective of progress achieved in other ADLs the MPM requires documentation of progress in a bowel/bladder program. MPM, *Supra*. Therefore, the denial of 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**.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 10/8/2009

***** 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.