

**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. 2009-33967CL

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 ██████████. The Appellant was represented by her daughters; ██████████. ██████████, 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 Alzheimer's, HTN, ID-DM, urinary and fecal incontinence, the residuals of left side stroke. She is assessed as "total care." (Department's Exhibit A, pp. 7, 8)
3. The Appellant's representatives assert that their mother is still active in the community and can assist with (one handed) with pull-ups. (See Testimony)

4. The representatives assert there is no feasible way to diaper their mother when she is out of the home – as there is no existing diaper changing accommodation station for an adult such as the Appellant. (See Testimony)
5. On ██████████, an assessment was conducted by a registered nurse from ██████████. She documented that the Appellant is non-verbal as a result of her stroke and is total care. (See Testimony of ██████████ and Department's Exhibit A, p. 8)
6. On ██████████, a prior authorization request for the continuation of pull-on briefs (doubled) was received and reviewed by the Department. (Department's Exhibit A, pp. 2, 6-10)
7. On ██████████, the Appellant was advised on the denial of the requested pull-on briefs and further informed of her right to appeal. (Department's Exhibit A, p. 4)
8. 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.

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. (Emphasis supplied)

Medicaid Provider Manual (MPM) Medical Supplier, October 1, 2009, pages 39, 40¹

The Department witness testified that the Appellant is no longer capable of meeting Medicaid program requirements for continued authorization of pull-on briefs owing to the residuals of her stroke and the deterioration of communication skills. This decision was documented by a registered nurse from the medical supplier and was reviewed by MDCH Medicaid analyst, ██████████.

██████████ also testified that a “letter” from ██████████ was received and reviewed – even though it lacked his letterhead and phone number. See Department Exhibit A, 5.

The Appellant’s representative argued that they would amend the request for a doubling of the prior dispersal of pull-ups – because they understood the policy implications voiced by witness ██████████ at hearing. The ALJ advised the parties that such a resolution was beyond the jurisdiction of SOAHR.

While the testimony of the Appellant’s representatives documented real concerns about accommodating adults in with disabilities in public places, there was no demonstration of program compliance as required under the Medicaid Provider Manual

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.

¹ This edition of the MPM is identical to the version in place at the time of appeal.

[REDACTED]
Docket No. 2009-33967 CL
Hearing Decision & Order

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: 11/6/2009

***** 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.