

**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. 2009-6466 CL
Case No. ██████████
Load ██████████

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, appeared on behalf of the Appellant. ██████████, represented the Department. ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of wipes?

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 cerebral palsy and incontinence. (Exhibit 1, Page 6).
2. The Appellant is a Medicaid beneficiary.
3. Prior to ██████████ Appellant was authorized to receive two boxes of wipes per month. (Exhibit 1, Page 8).

4. Prior to ██████████ Appellant was authorized to receive pull-on briefs each month. (Exhibit 1, Page 9).
5. On ██████████, a nursing assessment was conducted as part of a six months review of Appellant's authorization for pull-on briefs and wipes. (Exhibit 1, Pages 6-8).
6. Information from the assessment was forwarded to the Department. A Department Physician and a Departmental Analyst reviewed the documentation. (Exhibit 1, Pages 6-7).
7. On ██████████, the Department sent Appellant separate notices that the pull-on briefs and wipes "shall not be authorized" because "The documentation submitted does not support need for quantity requested". (Exhibit 1, Pages 5-6).
8. The Department's Advance Action Notice for wipes was defective because it incorrectly stated Appellant's wipes were not authorized when instead the Department had reduced the wipes from two boxes per month to one box per month. (Exhibit 1, Page 4).
9. As a result of the Department's defective Advance Action Notice for wipes the Appellant received no wipes from ██████████ to ██████████.
10. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 1, Page 4).

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 regarding coverage of incontinence products, including pull-on briefs and incontinent wipes, is addressed in the MDCH Medicaid Provider Manual (MPM):

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 or less frequently as determined by MDCH.

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.

*MDCH Medicaid Provider Manual, Medical Supplier Section,
January 1, 2009, Pages 40. (Exhibit 1, p 10).*

Incontinent wipes -

The Department's witness testified that during the [REDACTED] telephone assessment, the nurse assessor learned that the Appellant is home-schooled. The Department's witness further testified the nurse assessor determined that the Appellant's wipes should be reduced because the Department's policy only covers incontinent wipes where necessary to maintain cleanliness outside of the home and because the Appellant was only outside the home for activities three times per week.

The Appellant's representative/mother did not contest the statement that her daughter is home-schooled.

The Department's Advance Action Notice for wipes was defective because it incorrectly stated the reason for denial was that Appellant's wipes were not authorized, when instead the Department had reduced the wipes from two boxes per month to one box per month. (Exhibit 1, Page 4). The Department is bound to abide by the federal regulations that implement the Medicaid program. The federal regulations mandate that the Department notify the Appellant what action it intends to take and the reason for the action:

42 CFR § 431.210

Content of notice.

A notice required under § 431.206
(c)(2), (c)(3), or (c)(4) of this subpart must contain—

- (a) A statement of what action the State, skilled nursing facility, or nursing facility intends to take;
- (b) The reasons for the intended action;
- (c) The specific regulations that support, or the change in Federal or State law that requires, the action (underline added)

The Department's Notice explicitly said the wipes were "**not authorized**," when in fact the Department's witness testified that the wipes **were** authorized but at the reduced amount of one box per month. The Department's Notice was in clear violation of the Medicaid federal regulations.

The Department's defective Advance Action Notice for wipes caused the Appellant to receive no wipes from [REDACTED] to [REDACTED]. The Appellant's mother stated that because the notice plainly said the wipes were not authorized she did not call to inquire when the monthly provision stopped. The Department's witness testified that the Appellant did not have an ability to recover the several months' worth of wipes that not provided as a result of the defective notice.

Pull-on briefs -

The Department's witness testified that following the [REDACTED] telephone assessment, the Department's Physician Pediatrician, [REDACTED], reviewed the Appellant's documentation on file and requested an "updated letter from the neurologist or urologist." (Exhibit 1, Page 9). The Department's witness testified that because an updated letter from the neurologist or urologist was never received, the pull-on authorization was denied.

The Appellant's representative/mother stated the Appellant knows how to use the pull-on and is able to independently make the up and down motion needed to use a pull-on brief but is not able to independently use a diaper. The Appellant's representative/mother said the Appellant is now successful with independent bowel movements. The Appellant's representative/mother said the Appellant has several doctors' appointments upcoming and would obtain updated information to submit with a new request.

The evidence in this case supports the finding that at the time of the denial determination the Appellant did not meet the criteria for coverage of pull-on briefs or more than one box per month of wipes.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department denial of coverage for pull-on briefs and the reduction in boxes of wipes per month was in accordance with Department policy criteria.


IT IS THEREFORE ORDERED that

The Department's decisions are AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed 2/13/2009


Docket No. 2009-6466 CL
Decision and Order

***** 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.