

**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. 2009-15347CL

Case No. ██████████

Load 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 ██████████. ██████████, Appellant's legal guardian, represented Appellant. ██████████ and ██████████, Appellant's ██████████, testified as witnesses on his behalf. ██████████, Appeals Review Officer, represented the Department. ██████████, Departmental Analyst, appeared and testified as a witness for the Department.

ISSUE

Did the Department properly deny coverage of diapers, liners, gloves, and incontinent wipes?

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 ██████ year-old man with a medical history of hypertension, multiple sclerosis, blindness, and enlarged prostate. (Exhibit 1, Paged 10)
2. Appellant's assistive devices include colostomy and supra pubic catheter. (Exhibit 1, Page 10 & Appellant Exhibit A)

3. Appellant had been receiving diapers, liners, underpads, gloves, wipes, and skin protectant cream. (Exhibit 1, Page 12)
4. On ██████████, in response to a request for the aforementioned incontinent supplies, a required nursing assessment of Appellant was completed. (Exhibit 1, Pages 12 & 13)
5. During the nursing assessment, it was noted that the incontinent supplies were being used for other than incontinence; and Appellant is not incontinent since “colostomy collects stool and catheter collects urine.” (Exhibit 1, Page 12)
6. Information from the assessment was forwarded to the Department and reviewed by a Department Physician and a Medicaid Utilization Analyst who denied the request for incontinent supplies.
7. On ██████████, the Department sent Appellant notice that the request for diapers and incontinent supplies was denied. (Exhibit 1 Page 9)
8. 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, October 1, 2008, Page 40.

Appellant was receiving diapers, liners, gloves and incontinent wipes. At review, the Department determined that the Appellant did not meet the above eligibility criteria for diapers and incontinent supplies. A Department Physician and Medicaid Utilization Analyst reviewed the documentation and upheld the denial of diapers and the additional incontinent supplies that Appellant had been receiving. The Department witness testified that Appellant was approved for skin cream and underpads.

Appellant's witnesses testified that Appellant was wearing the diapers to keep his bed area clean. They testified that the gloves were used by the caregiver for sanitary

purposes; and Appellant needs the wipes to maintain skin integrity, and the liners are used inside the diapers to prevent bed sores. Appellant's witnesses testified further that Appellant's doctor prescribed the diapers due to leakage which occurs near Appellant's abdomen and rectum.

According to Appellant's medical doctor, Appellant is using urine collection bags due to his colostomy and supra pubic catheter. The doctor stated that the urine collection bags are in constant use, and the urine content is usually extreme to that they need to be cleaned multiple times during the month. The doctor stated further that Appellant needs to have a clean bacteria free environment to prevent constant infections and maintain his quality of life "with the dignity he deserves."

Appellant's ██████████ did an excellent job of presenting Appellant's case, and this Administrative Law Judge must commend them for the extraordinary care that they provide to Appellant. However, the Department's denial of diapers and the other incontinent supplies requested must be upheld on the basis that Appellant does not meet the above eligibility criteria. The reason is because Appellant's medical condition/incontinence is being treated with a colostomy bag and supra pubic catheter. Further, Medicaid policy states clearly that incontinent wipes are covered only for the purposes of maintaining cleanliness outside the home, not inside the home. This Administrative Law Judge does not have the authority to overrule or make exceptions to the applicable Medicaid policy. If Appellant is having problems with leakage, his treating physician should be contacted, immediately, so that this problem can be resolved. Accordingly, the denial 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 diapers, liners, gloves, and incontinent wipes.

IT IS THEREFORE ORDERED that

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

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

cc: ██████████

[REDACTED]
Docket No. 2009-15347 CL
Hearing Decision & Order



Date Mailed: 6/3/2009

***** 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.