

**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.** 2009-17659 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 on behalf of her minor son, ██████████).

██████████ represented the Department of Community Health (Department). Also in attendance on behalf of the Department was ██████████

**ISSUE**

Has the Department properly denied Appellant coverage for Pull-ons?

**FINDINGS OF FACT**

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

1. Appellant is an ██████████ Medicaid beneficiary. His medical diagnoses include autism, developmental delay, and incontinence of bowel and bladder. (*Exhibit 1; p. 9*)
2. On ██████████, a telephone prior authorization request for Pull-ons was received by J & B Medical, the Department's contractor for diapers and incontinence supplies program, on behalf of the Appellant. The request was reviewed and disapproved on the basis that the information provided did not support coverage for Pull-ons.

3. On [REDACTED], a letter was mailed to the Appellant informing him of the denial. He was also informed of his right to hearing on the issue.
4. On [REDACTED], the Appellant's mother submitted a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.
5. A [REDACTED], letter from the Appellant's teacher at the [REDACTED] provides, in pertinent part as follows:

*"...We work on potty training when bathrooming. He is not highly successful at this time. He uses 3-4 pull-ups a day. Dry sometimes wet sometimes ---10 accidents a week---40 in a 4-week period. This is an estimation..." (Exhibit 1; p. 6)*

### **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**

**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 training program.

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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 satisfied that burden here 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).

The Michigan Supreme Court defines proof, by a preponderance of the evidence, as requiring that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence. See, e.g., *Martucci v Detroit Police Comm'r*, 322 Mich 270, 274; 33 NW2d 789 (1948).

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).

It is the province of the Administrative Law Judge to adjudge the credibility and weight to be afforded the evidence presented. *Maloy v. Stuttgart Memorial Hosp.*, 316 Ark. 447, 872 S.W.2d 401 (1994).

Current policy covers Pull-on briefs when a beneficiary aged 3 through 20 is actively participating and demonstrating definitive progress in a bowel/bladder training program. The letter from Appellant's school indicates he actively participates in using a bathroom, although he is not highly successful as of [REDACTED]. This does not mean he is not making definitive progress, but rather, that his progress may be slower than may otherwise be expected. The letter indicates only that he is not highly successful at this point in time.

Because the Appellant is actively participating in a bowel/bladder training program, and is making definitive progress, albeit slowly, I conclude he has established satisfaction of criteria for pull-on briefs. I therefore conclude the Department's denial at this point is arbitrary, premature, and denies an otherwise medically necessary Medicaid-covered service.

### **DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, I decide the Department's denial of Appellant's request for Pull-ups is inappropriate, as in violation of present policy.

**IT IS THEREFORE ORDERED** that:

The Department's decision is REVERSED.

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

[REDACTED]  
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cc: [REDACTED]

Date Mailed: 6/26/2009

**\*\*\* 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.