

**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. 2009-28312 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., upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother/legal guardian appeared and testified on behalf of the Appellant. ██████████ Appeals Review Officer, represented the Department. ██████████ Michigan Department of Community Health (MDCH), Incontinence Supply Contract Manager, appeared and testified as a witness for the Department.

ISSUE

Must the Department redetermine Appellant's eligibility for 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 ██████████ who was diagnosed with mental retardation WAGR syndrome, autism, and bowel and bladder incontinence. (Exhibit 1, Page 8)
2. Appellant was approved for pull-on briefs, the maximum amount of 4-5 per day, in ██████████ (Exhibit 1, Page 19)

3. In ██████████, a nursing assessment of Appellant was completed. (Exhibit 1 Page 10)
4. On ██████████, Appellant's mother reported that Appellant had a new teacher and is doing better with toileting. (Exhibit 1, Page 9)
5. According to a letter received on ██████████, from Appellant's ██████████ school District teacher: Appellant has made improvements in getting to the bathroom independently, and he is dry when he is taken to the bathroom about half of the time; the school is using 1-2 pull-ups per day in the classroom; he has the ability to become potty-trained and is capable of mastering the task, but it will take him longer due to his cognitive disability; and the school staff are willing to work with Appellant on toilet training, and it is the teacher's opinion that they should continue to work on this. (Exhibit 1, Page 7)
6. Information from the assessment was forwarded to the Department who reviewed and denied the request for pull-ons briefs on the basis that Appellant has not made any definitive progress in a bowel/bladder program.
7. On ██████████, an Advance Action Notice was sent to Appellant, stating that the request for pull-ons was denied. (Exhibit 1 Page 4)
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, July 1, 2009, Page 40.


Appellant's mother is protesting the Department's determination that Appellant no longer meets the above eligibility criteria for pull-ons. The Department witness testified that the Department reviewed Appellant's case file which contained all of the nursing assessments done to determine Appellant's eligibility for pull-ons at reviews. The Department witness testified that the nursing assessments revealed that Appellant has

continued to receive the maximum amount of pull-ons since his eligibility begin date for incontinent supplies. The Department determined that Appellant has not been making definitive progress in a bowel and bladder program since there has been no decrease in the amount of pull-ons that he has been receiving.

According to Appellant's mother, Appellant was never potty trained properly until he got a new teacher last year. Appellant's mother testified that Appellant is doing much better with potty training. In addition, she testified that there has been a decrease in the amount of pull-ons that Appellant needs. There is evidence on the record which corroborates the testimony of Appellant's mother concerning the progress that Appellant has been making with toilet training. According to a letter received on ██████████ from Appellant's Montcalm Area Intermediate school District teacher: Appellant has made improvements in getting to the bathroom independently, and he is dry when he is taken to the bathroom about half of the time; the school is using 1-2 pull-ups per day in the classroom; he has the ability to become potty-trained and is capable of mastering the task, but it will take him longer due to his cognitive disability; and the school staff are willing to work with Appellant on toilet training, and it is the teacher's opinion that they should continue to work on this. The Department requested this information from the teacher in order to determine Appellant's success rate, if any, in a toilet training program. The Department witness testified that the Department determined that there was not enough information from Appellant's mother and his school to determine whether he was making definitive progress in a bowel/bladder program at the last review. Therefore, the Department relied on the previous nursing assessments of Appellant, which shows that Appellant has received the maximum amount of pull-ons, continuously.

Appellant had the burden of establishing that he continues to meet the eligibility criteria for pull-ons. On the other hand, the Department had the burden of going forward and establishing that it properly determined that Appellant no longer met the eligibility criteria for pull-ons at the last review. The Department has not met its burden of proof in this case. The fact that the Department has continued to approve Appellant for the maximum amount of pull-on briefs since he became eligible for them in ██████████, is not enough evidence to establish that he has not been making definitive progress in a bowel/bladder program. Further, the Department did not provide enough evidence to establish that Appellant continues to need the maximum amount of pull-ons that he has been receiving.

In conclusion, the Department has not met its burden of going forward and establishing that Appellant no longer met the eligibility for pull-on briefs at review. Therefore, the Department must complete another nursing assessment of Appellant to determine the amount of pull-ons that Appellant needs on a daily basis, and whether Appellant continues to meet the eligibility criteria for pull-on briefs.


Docket No. 2009-28312 CL
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department must redetermine Appellant's eligibility for pull-on briefs.

IT IS THEREFORE ORDERED that

The Department's decision is REVERSED.

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

cc:



Date Mailed: 9/11/2009

***** 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.