

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. 2009-29580 CL
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████, the Appellant's mother, appeared on behalf of the Appellant.

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

ISSUE

Has the Department properly denied Appellant continued coverage for pull-on briefs?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. The Appellant is a ██████████ Medicaid beneficiary.
2. The Appellant is enrolled in Special Education classes at her public school. She is diagnosed with alternating hemiplegia of childhood. She is moderately cognitively impaired.
3. In response to a ██████████, request from the Appellant, a Department pediatrician reviewed a request for pull-on briefs.
4. The Department had previously approved the pull on briefs for a period of 6 months. At review, it was learned the same number of briefs had been requested and had been approved 6 months earlier.

5. The Department determined no definitive progress in toilet training had been made by the Appellant, thus denied the request for prior authorization of additional pull on briefs.
6. The denial was sent [REDACTED].
7. The Appellant's mother filed her request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED].

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 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 in, 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 following applies:

- The beneficiary is able to care for his/her toileting needs independently or with minimal assistance from a caregiver. (Emphasis added)

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.

The testimony taken establishes no material factual dispute. The Appellant is and has participated in toilet training both at home and at school. Despite her participation in the program, she is not evidencing any definitive progress in her toilet training. Her mother provided testimony indicating she will say “potty” and then she has to pick her up and rush her to the bathroom. She further testified she does not believe her daughter is able to feel urine at all due to her medical condition. She further stated regression is possible due to her medical condition and she believes her daughter still has progress to make.

The Department witness testified that a request for the same number of pull-on briefs is consistent with a determination that no definitive progress was being made in the toilet training program. She provided uncontested testimony the same number of briefs were requested in [REDACTED] as the last request.

This ALJ considered the testimony from both parties. While the assertion that the Appellant’s use of the word “potty” may be consistent with some amount of progress in the toilet training issue, it is insufficient to evidence definitive progress as required by the Department Policy. There is insufficient evidence in the record for this ALJ to find definitive progress has been made in the toilet training program. This ALJ cannot reverse the Department determination and find the authorization criteria is satisfied.

Current policy is clear in this area. Pull-ons are provided on a temporary basis, and considered a short-term transitional product to be used as a training item. The evidence presented clearly indicates the Appellant is not making definitive progress in a training program. This decision does not reflect a belief that the Appellant will never advance in toilet training, rather, this determination is only whether the authorization criteria for Medicaid coverage of pull-ups has been met.

DECISION AND ORDER


Based on the above findings of fact and conclusions of law, I find the Department’s denial of pull-on briefs is appropriate, as in accord with present policy.

IT IS THEREFORE ORDERED that:

The Department’s decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]


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Date Mailed: 9/29/2009

***** 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.