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:

[redacted],

Appellant
_____/

Docket No. 2009-32214 CL
Case No. [redacted]

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 [redacted]. [redacted], appeared on behalf of the Appellant.

[redacted], represented the Department of Community Health (Department). Also in attendance on behalf of the Department was [redacted] for the [redacted].

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 an [redacted] Medicaid beneficiary.

2. The Appellant is severely cognitively impaired and suffers physical ailments as well, including hypotonia.

3. The Appellant is enrolled in Special Education classes at her public school where she is participating in a toilet training program.

4. The Appellant has been participating in a toilet training program for approximately 2 years.

5. The Appellant's incontinent supply company conducted a nursing assessment in

[redacted] for the purpose of addressing continued need for pull-on briefs. Following the assessment, a request for continuing coverage for pull-on briefs was made to the Department, in [redacted].

6. A Department pediatrician reviewed a request for pull-on briefs. The Department determined there was insufficient evidence of definitive progress in toilet training, thus discontinued authorization for coverage.

7. The Department based its determination that a lack of definitive progress was demonstrated by the uncontested fact that the same number of pull-on briefs was requested as had been requested since the Appellant had begun using them over 2 years earlier.

8. The Department sent a Notice of denial [redacted].

9. 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.
>
> *Michigan Department of Community Health*
> *Medicaid Provider Manual*
> *Medical Supplier; Version Date: April 1, 2008;*
> *Page 40*

The testimony taken establishes no material factual dispute. The dispute is in the interpretation of the facts. The Appellant's aunt asserts there is evidence of definitive progress. The Department asserts there is insufficient evidence of definitive progress to continue authorizing use of pull-on briefs. It is uncontested pull-on briefs have been authorized for Medicaid coverage for at least 2 years. It is undisputed the same number of pull-on briefs was requested in the most recent request for authorization.

The Appellant provided a letter from the school evidencing the toilet training program the Appellant is participating in. She is learning a schedule and the steps she has to take. There is sparse evidence she is able to or has learned when she needs to use the bathroom prior to having soiled the pull-on briefs, despite valiant efforts by all parties. She does suffer physical/medical issues that also interfere with toilet training, according to her aunt.

According to the evidence of record, the Appellant has made some progress. This ALJ does not find the progress made evidences definitive progress in toilet training. She is being trained and she is obviously compliant with the people instituting the program, however, after over 2 years of pull-on brief use, she should be able to demonstrate more definitive progress than is in evidence. No evidence was presented the Appellant initiates bathroom use at any time prior to her scheduled time, or that she is able to control either bowel or bladder function until she is in the bathroom. The Appellant's aunt asserts in middle school it is important she not have to go back to diapers. This ALJ can only address that by pointing out nobody is requiring she use diapers. The only issue at hearing is whether the Department policy allows for continued Medicaid coverage of the item sought, not whether the Appellant has to use diapers or not.

Current policy is clear in this area. Pull-on briefs are provided on a temporary basis, and considered a short-term transitional product to be used as a training item. Over 2 years, even taking into consideration the special needs and medical issues of the Appellant, cannot be found to meet the definition of short-term or transitional in the context of toilet training. 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. 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-on briefs 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]

Date Mailed: 12/22/2009

***** 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.