

**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.** 2009-35008 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 ██████████ (Appellant) appeared and testified on his own behalf. Also appearing as a witness for the Appellant was ██████████.

██████████, Appeals Review Officer, represented the Department of Community Health (Department). Also in attendance on behalf of the Department was ██████████, Contract Manager for the Department's Diaper and Incontinence Supplies Program.

**ISSUE**

Has the Department properly denied Appellant coverage for diaper and incontinence supplies?

**FINDINGS OF FACT**

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

1. Appellant is a ██████████ Medicaid beneficiary.
2. On ██████████ sent the Appellant an Adequate Action Notice notifying him that his request for Diaper and Incontinence Supplies submitted by his physician was denied, as criteria had not been satisfied.

3. According to an [REDACTED] assessment, the Appellant is incontinent of urine only at night, because he does not wake up in time to use a toilet. He is independent with toileting during daylight hours and is out of the house several times a week. He currently does not wear diapers.
4. The record is devoid of evidence suggestive of a medical reason for the Appellant's incontinence.
5. On [REDACTED] the Appellant filed his Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

### **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.

### **INCONTINENCE SUPPLIES; STANDARDS OF COVERAGE**

**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 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 program.

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.

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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 satisfies that burden 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).

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).

Thus, the Appellant must demonstrate, by a preponderance of the evidence, that he meets current criteria for pull-ons, wipes and diapers.

Above-cited policy is clear. Incontinence supplies are covered in the presence of a medical condition resulting in incontinence and there is no response to a bowel/bladder training program, or when the medical condition being treated results in incontinence, and a beneficiary would not benefit from or has failed a bowel/bladder training program.

The record is devoid of evidence of any particularized medical condition or treatment that is causing the Appellant's occasional episodes of urinary incontinence. IN the absence of such an indication, the requested incontinence supplies are not a Medicaid-covered service.

Accordingly, I conclude the Appellant is ineligible for incontinent wipes.

[REDACTED]  
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**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, I decide the Department has appropriately denied the Appellant's request for diapers, pull-ons and wipes.

**IT IS THEREFORE ORDERED** that:

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

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

cc:

[REDACTED]

Date Mailed: 11/20/2009

**\*\*\* 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.