

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. 2009-5827 CL
Case No. ██████████
Load 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 ██████████ ██████████ from ██████████ appeared on behalf of the Appellant.

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

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 ██████-year old Medicaid beneficiary.
2. In response to a request from the Appellant for pull-on briefs, ██████████, contractor for the State of Michigan Diaper and Incontinent Supplies Program, completed an assessment with the Appellant. According to the ██████████ Nursing Assessment, he suffers from autism, seizure disorder and incontinence.
3. On ██████████, a telephone request was made to the Department of Community Health for prior authorization for pull ups.

4. On ██████████ the Department notified the Appellant his request was denied. The denial was based on evidence that the Appellant is not participating and making progress in a toilet training program.
5. The Appellant's father filed his request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████

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 not currently participating in toilet training, nor has progress been made in past attempts to toilet train him. The Appellant does not have the cognitive ability to independently care for his toileting needs. 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 participating in a training program.

The testimony provided regarding the Appellant's extreme tactile sensitivity and insistence on removing all diapers that are not pull up styles was heard and considered, however, is not material to the disposition of the case. This ALJ has no equitable jurisdiction and is required to apply the policy as written. The policy is clear and unambiguous. This ALJ is required to apply it in every instance.

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: 2/23/2009

***** 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.



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