

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

[REDACTED]

Appellant

_____ /

Docket No. 2009-6465CL

Case No. [REDACTED]

Load No. [REDACTED]

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 [REDACTED] [REDACTED] aormina, Appellant's mother, appeared on behalf of the Appellant. [REDACTED]

[REDACTED], represented the Department. [REDACTED]
[REDACTED], appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional Incontinent Wipes which exceed the monthly quantity limit?

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 [REDACTED] year-old male Medicaid beneficiary who was diagnosed with severe autism, self-abusive behavior, and tactile sensitivity. (Exhibit 1, p. 11)
2. Appellant receives Community Mental Health (CMH) services and has a Supports coordinator through [REDACTED]. (Exhibit 1, p. 10)

3. Appellant's doctor reported that Appellant will only tolerate pull-ups due to his sensitivity that has been aggravated by early puberty. (Exhibit 1, p. 11)
4. The Department approved Appellant for 150 pull-ons, which is the maximum monthly amount that a Medicaid beneficiary can receive. (ALJ l)
5. In ██████████ Appellant's mother requested an increase in pull-ons, beyond the monthly maximum limit. (Exhibit 1, p. 6)
6. Appellant was a student at ██████████ at all times relevant to this matter. (Exhibit 1, p. 9)
7. According to a letter dated ██████████, from Appellant's classroom teacher, Appellant does not initiate a need to use the bathroom and still urinates and has bowel movement accidents in his pull-ups, however, Appellant has shown improvement over the past year in letting an adult know when he has already had an accident. (Exhibit 1, p. 9)
8. On ██████████, the Department sent Appellant notice that the request for additional pull-ons was denied on the basis the documentation submitted on Appellant's behalf does not support a need for the quantity requested. (Exhibit 1, p. 4)
9. On ██████████, the Department received Appellant's Request for Hearing, protesting the denial of the additional pull-ons.

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, as addressed in the MDCH Medicaid Provider Manual:

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. **(per bulletin MSA 05-12 effective 4/1/05)**

Continued Coverage for Pull-On Briefs: 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. (per bulletin MSA 05-12 effective 4/1/05)

Continued Coverage for Pull-On Briefs: 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.

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-up briefs, a six-month reassessment is required.

MDCH Medicaid Provider Manual, Medical Supplier Section, effective July 1, 2007.

Appellant was approved for 150 pull-ons per month. The Department submitted documentation to establish that Medicaid beneficiaries who are eligible for pull-ons are entitled to a monthly quantity limit of 150. (See ALJ I) The Department asserts that Appellant does not meet the eligibility criteria for pull-ons, but the Department made an exception in his case. The Department witness testified that the additional pull-ons were requested because of Appellant's behavioral issues which are causing bowel/bladder incontinence.

Appellant's mother stated that Appellant has severe autism. She testified further that the additional pull-ons are needed because, just recently, Appellant has been wetting the bed and having problems with constipation. According to Appellant's mother, Appellant is having medical problems which are causing his incontinence, and therefore, Appellant has the need for additional pull-ons.

This Administrative Law Judge must uphold the Department's denial. Appellant's mother/representative failed to provide the necessary evidence to establish that Appellant meets the eligibility criteria for pull-ons. The Medicaid policy states clearly that pull-on briefs are covered for beneficiaries age ██████ when there is the presence of a medical condition causing bowel/bladder incontinence. At the time of the eligibility determination, the Department received evidence that Appellant's incontinence and need for the additional pull-ons was due to a behavioral problems. Further, the evidence on the record fails to establish that Appellant has demonstrated definitive progress in a bowel/bladder program. According to Appellant's school teacher, Appellant has shown improvement over the past year only in letting an adult know when he has already had an accident. The teacher reported that Appellant does not yet initiate a need to use the bathroom, and he still urinates and has bowel movement accidents in his pull-ups. Despite not meeting the eligibility criteria, the Department made an exception and approved Appellant for the maximum monthly quantity of pull-ons that a Medicaid beneficiary is eligible to receive. The evidence on the record fails to establish that Appellant is eligible to receive additional pull-ons.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's request for additional pull-ons which exceed the monthly quantity limit.

IT IS THEREFORE ORDERED that

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

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

cc:

[REDACTED]

Date Mailed: 3/10/2009

***** 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.