

**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. 2009-6467CL

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., upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████, guardian, represented the Appellant. ██████████, represented the Department. Her witness was ██████████.

ISSUE

Did the Department properly deny coverage of pull-on briefs?

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 an ██████ year-old male Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with ADHD, autism, CP, UI and chronic constipation. (See Testimony and Department's Exhibit A, p. 8)
3. The Appellant attends ██████████, full time, seven days a week. Included in his educational component is toilet training. (Department's Exhibit A, p. 7)

4. On ██████████, a prior authorization request for pull-on briefs was received by the Department. (Department's Exhibit A, p. 2)
5. On ██████████, the Appellant was advised on the denial of the requested pull-on briefs and further informed of his right to appeal. (Department's Exhibit A, pp. 2, 5)
6. The request for pull-on briefs was reviewed by OMA staff pediatrician. ██████████ ██████████, who concurred with the denial owing to "no definitive progress. ...[N]ot covered for behavioral issues." (Department's Exhibit A, p. 6)
7. On ██████████, the instant appeal was received by the State Office of Administrative Hearings and Rules (SOAHR). (Appellant's Exhibit #1)

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.

The Department policy for pull-on brief coverage is addressed in the Medicaid Provider Manual:

[] 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 supplied)

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.

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.

Intermittent catheters with insertion supplies are covered for beneficiaries who have a chronic urinary dysfunction for which sterile technique is clinically required.

Disposable underpads are covered for beneficiaries of all ages with a medical condition resulting in incontinence.

Medicaid Provider Manual (MPM) Medical Supplier, January 1, 2009, page 40

The Department witness testified that the Appellant is only successful about 50 per cent of the time with the toileting process – even though he is given ample time and has using the pull-on product since ██████████. She added that the problem surfaces at school when he begins to leak and smear stool and that the problem manifests as a behavioral issue. An evaluation from the Appellant's school verified no improved recognition by the Appellant for toilet use.

The Appellant's representative and guardian testified that Appellant's medical issues drive the behavioral issues and that the Appellant has noticed his pull-on briefs and that a return to diapers would cause him to regress.

On review, a Department Physician and Medicaid Utilization Analyst reviewed the documentation submitted with the Appellant's request for pull-on briefs. They denied the request for pull-on briefs on the basis that Appellant had not made definitive progress in his toileting program. A letter from the Appellant's school on ██████████, verified his inconsistent results. And, notes from a Medicaid analyst and the Appellant's mother document the chronic behavioral component to this appeal. See *generally*, Department's Exhibit A at pages 11-14.

The evidence provided by the Department clearly established that the Appellant has made no progress in his long established toilet training program. The Appellant has failed to provide any persuasive evidence that he has made definitive improvement [as required under the MPM] – or that the toileting issue was not a behavioral issue. Therefore, the denial of coverage for pull-on briefs must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied coverage of pull-on briefs.

[REDACTED]
Docket No. 2009-6467 CL
Hearing Decision & Order

IT IS THEREFORE ORDERED that

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

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 3/5/2009

***** 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.