

**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. 2010-2214 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ appeared and testified. ██████████, the Appellant's daughter, appeared as her representative. ██████████, Appeals Review Officer, represented the Department. ██████████, Michigan Department of Community Health (MDCH) Manager for Diaper and Incontinence Program, appeared as a witness for the Department.

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 a ██████████ woman with Parkinson's disease, arthritis, and incontinence bowel and bladder. (Exhibit 1, Page 6).
2. The Appellant is a Medicaid beneficiary.
3. Prior to ██████████, the Appellant was authorized to receive pull-on briefs each month. (Exhibit 1, Page 7).

4. On [REDACTED], a nursing assessment was conducted as a result of a request for authorization of the Appellant's pull-on briefs. (Exhibit 1, Pages 8-10).
5. On [REDACTED], the Department sent the Appellant an Advance Action Notice that the pull-on briefs "shall not be authorized," effective [REDACTED] because "the information provided did not support coverage of this service." (Exhibit 1, Page 5).
6. On [REDACTED], the Department received the Appellant's Request for Hearing. A signed hearing request was submitted on [REDACTED] (Exhibit 1, Page 4).

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 regarding coverage of incontinence products, including pull-on briefs, is addressed in the MDCH Medicaid Provider Manual (MPM):

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.

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. (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.

MDCH Medicaid Provider Manual, Medical Supplier Section, October 1, 2009, Pages 39-40. (Exhibit 1, Pages 11-12).

The Department's witness testified that during the [REDACTED], telephone assessment, the Appellant's son stated that the Appellant is cognitively aware she has to toilet and can communicate this need, however, she requires assistance to the toilet, with lifting her, pulling pants up and down, and with hygiene due to arthritis in her hands and Parkinson's. The Appellant's son also stated that they do not make it there about 80% of the time due to urgency and functional issues. (Exhibit 1, Page 6) The Department's witness testified that in order for Medicaid to pay for pull-on briefs the beneficiary must be able to care for her toileting needs independently or with minimal assistance. The Department's witness further testified that because the Appellant requires full assistance with toileting, she does not qualify for pull-on briefs under the Medicaid policy.

The Appellant's representative/daughter testified that the Appellant does require full assistance for toileting; however, the pull-on briefs are easier to change than diapers. The Appellant testified that diapers are bulky under her clothes and confirmed that the pull-ons are easier and faster. The Appellant's representative/daughter stated that as a matter of dignity the Appellant should receive pull-on briefs instead of diapers.

While this ALJ understands the Appellant's concerns regarding dignity as well as the practical ease of using pull-on briefs instead of diapers, the Department policy in this area is clear. The evidence in this case supports the finding that the Appellant did not meet the Department's policy criteria for Medicaid coverage of pull-on briefs because she requires full assistance with toileting.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's denial of coverage for pull-on briefs was in accordance with Department policy criteria.

IT IS THEREFORE ORDERED that:

The Department's decisions are AFFIRMED.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: 

Date Mailed 1/6/2010

***** 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.