

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2010-36126 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 ██████████. ██████████ appeared and testified on her own behalf.

██████████, represented the Department. ██████████

██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of diaper and incontinence supplies?

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 ██████████ Medicaid beneficiary who had gall bladder surgery in ██████████.
2. The Appellant's physician requested Medicaid covered diaper and incontinence supplies through program vendor ██████████.
3. A telephone nursing assessment was conducted in response to the Appellant's request for supplies.
4. Assessment notes submitted into evidence state the Appellant urinates at night

without waking and is occasionally incontinent during the daytime as well. She is not incontinent of bowel.

5. The assessment further states the Appellant is incontinent 5-6 days per week.
6. On [REDACTED], the Department sent the Appellant an Advance Action Notice that the incontinence supplies (unspecified) "shall not be authorized," because "the information provided did not support coverage of this service."
7. On [REDACTED], the Department received the Appellant's Request for Hearing.

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 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.

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.*

The Department's witness testified that the Appellant is not incontinent on a daily basis, therefore she does not meet coverage standards. It is undisputed the Appellant is not incontinent of bowel. She has chronic, intermittent urinary incontinence, primarily at night. She has occasional day time urinary incontinence as well, according to the assessment entered into evidence at the request of the Department.

The Appellant stated she misunderstood the questions on the telephone during the initial assessment and asserted she is incontinent on a daily basis. She stated she does have a medical condition resulting in her urinary incontinence, it is resultant from her gall bladder surgery in ██████████, which resulted in a stay in the intensive care unit of the hospital. The Appellant was advised by the Department witness that she could have her physician submit documentation stating the cause and type of her incontinence and further indicate if it is daily or occasional. The Department witness further asserted nighttime incontinence is considered a behavioral issue and is not covered.

This ALJ consulted the Medicaid Provider Manual Standards of Coverage for incontinence supplies. No definition of incontinence was found in the manual, or specification of which types of incontinence are covered and which are not covered. Without a specific policy stating incontinence must occur each and every day, this ALJ is not constrained to the Department's interpretation of what incontinence is. Consulting the Mayo Clinic's description of incontinence, the symptoms described and experienced by the Appellant satisfy medical criteria for what incontinence is. The Mayo Clinic website specifically states:

Urinary incontinence is the inability to control the release of urine from your bladder. Some people experience occasional, minor leaks — or dribbles — of urine. Others wet their clothes frequently.

Based upon the nursing assessment that was conducted after the Appellant's physician made the request for the supplies, it is uncontested the Appellant is incontinent of urine at night. She is further incontinent of urine **at least on occasion** during the daytime as well. The nursing assessment specifically states "client states she is incontinent of urine 5-6 days per week." The Appellant suffers chronic, occasional (but frequent) urinary incontinence. This ALJ could not find any exclusion in the Medicaid Provider Manual for those suffering urinary incontinence primarily at night, with occasional daytime incontinence, nor could she find policy that excludes those who are not incontinent each and every day. It is clear the Appellant does not have the ability to control the release of urine from her bladder, thus she is incontinent. The Department witness asserts that because the Appellant is not incontinent every day, she does not meet the criteria for coverage of the supplies sought. This is not supported by the Policy read by this ALJ. This ALJ also conducted a word search of the term incontinence in the Medicaid Provider Manual. It was not specifically defined anywhere in the manual, nor was there any language supporting the narrow interpretation given it by the Department's witness at this hearing. This ALJ was unable to ascertain where the Department witness obtained her definition of incontinence or how she determined the Standards of Coverage set forth in the Medicaid Provider Manual limit coverage to those incontinent of urine on a daily basis. Nor could she find support for the contention that night time urinary incontinence is excluded from coverage. But that is neither here nor there as it is evidenced in the record the Appellant does experience daytime urinary incontinence as well as night time incontinence. Because the Medicaid Provider Manual does not support the narrow construction given by the Department, the denial cannot be sustained.

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 incontinence supplies is incorrect, as it is not supported by Department policy.

[REDACTED]
Docket No. 2010-36126 CL
Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed 8/5/2010

***** 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.