

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. 2010-39446 CL
Case ██████████

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 ██████████ ██████████, the Appellant's mother, appeared on behalf of the Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health (Department). ██████████, Contract Manager for the Department's Diaper and Incontinence Supplies Program, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant coverage for pull-on briefs?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. The Appellant is a ██████████ Medicaid beneficiary. (Exhibit 1, page 8)
2. The Appellant suffers from shaken baby syndrome, right arm paralysis, a weak right leg, and cognitive delay. (Exhibit 1, page 8)
3. The Appellant is enrolled in the ██████████ area school district, where she is participating in a toilet-training program. (Exhibit 1, page 7)
4. The Appellant and her mother just recently moved to Michigan in ██████████. But the Appellant has been in pull-ons for the last three to four years. (Exhibit 1, page 4; Testimony of ██████████)

5. An incontinent supply company contracted by the Department conducted a nursing assessment on [REDACTED], for the purpose of addressing the Appellant's need for pull-on briefs. (Exhibit 1, page 9)
6. A Department pediatrician reviewed and denied the request for pull-on briefs. The Department determined that there was insufficient evidence of definitive progress in toilet training. (Exhibit 1, page 11)
7. The Department sent an Advance Action Notice of the denial on [REDACTED] (Exhibit 1, page 5)
8. The Appellant's mother filed a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health 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.

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.

*Michigan Department of Community Health
Medicaid Provider Manual
Medical Supplier; April 1, 2010;
Page 40*

The Department asserts that there is insufficient evidence of definitive progress to authorize use of pull-on briefs. The Department's witness defined definitive progress as "a showing that [the beneficiary] can be dry for longer periods of time between changes" and a showing that "less product" is being used. More specifically, the witness stated that the Department would like to see three to four changes per day.

According to the Department witness, during the initial telephone nursing assessment, the Appellant's mother stated that the Appellant needs six changes per day, which is maximum number allowed per day. (Exhibit 1, page 8) The Department also explained that the letter provided by the Appellant's school failed to document definitive progress. The letter stated that the Appellant participates in a toileting program, but the Appellant is unable to initiate toileting, and she still has accidents during the day. (Exhibit 1, page 7)

The letter did also indicate that the Appellant was able to assist with pulling her pants up and down and with wiping herself. It further stated that the Appellant "has improved in her ability to sit on the toilet for an extended period of time and actually, going on the toilet has increased somewhat." (Exhibit 1, page 7) However, the Department witness explained that this information does not explain what kind of progress the Appellant has made. Rather, it was interpreted by the Department's physician as only meaning that the Appellant can sit on the toilet.

The Appellant's mother testified that there has been definitive progress. She stated that the Appellant is able to communicate when she has to use the bathroom by scooting to the toilet or pointing to the bathroom or herself. The Appellant's mother further testified that the Appellant was able to stay dry on the one and one-half hour school bus ride each day to and from school, and she attributed the Appellant's toileting problems at school with the fact that the Appellant had a male para-professional taking her to the bathroom. She further stated that since school has been out, the Appellant is wearing regular underwear and is only using one to two pull-ons per day. In addition, the Appellant's mother pointed out several discrepancies with the nursing assessment.

The Department's denial was proper. The Appellant and her mother had just moved to Michigan,

but the Appellant had been using pull-ons for the past three to four years. Further, while the school's letter indicated that the Appellant is able to sit on the toilet for longer periods of time, and that she is actually going on the toilet, it also stated that the Appellant still has accidents and requires the maximum number of changes per day. Finally, while the Appellant's mother indicated that she has made progress over the summer, that information was not available to the Department at the time the decision was made. However, given the Appellant's recent progress, it appears that a new nursing assessment would be beneficial, and the Appellant's mother was encouraged at the hearing to pursue same.

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 proper.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: 

Date Mailed: 9/10/2010

***** 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.

