

**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. 2010-40518 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 on behalf of the Appellant. ██████████, represented the Department. ██████████, 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 ██████████ with developmental delay, autism, and seizures. (Exhibit 1, Page 7).
2. The Appellant is a Medicaid beneficiary.
3. On ██████████, a six-month nursing assessment was completed as part of a renewal authorization for Appellant's pull-on briefs. (Exhibit 1, Pages 6-8).
4. The nurse who conducted the assessment recorded that Appellant's mother stated Appellant does not communicate the need to toilet. (Exhibit 1, Page 8).

- 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, July 1, 2010, Pages 41-42. (Exhibit 1, pp 11-12).

The Department's witness testified that during the ██████████ telephone assessment, the nurse assessor reported that Appellant's mother stated Appellant does not communicate the need to toilet. The Department's witness further testified the nurse assessor sought a letter from the Appellant's teacher, and when the letter was received noted that Appellant's teacher explicitly said that Appellant had not made any progress in a toileting program. The Department's witness testified that Michigan Medicaid policy requires definitive progress in a bowel/bladder program in order to cover pull on briefs and the evidence in Appellant's case to not show any progress.

The Appellant's representative/mother testified that the Appellant had been sick a lot in ██████████, had missed a lot of school, and those were the reasons she may not have been showing progress. The Appellant's representative/mother explained that the Appellant's last Individualized Education Plan (IEP) showed that the Appellant had made progress. The Appellant's representative/mother stated that it is more likely to succeed with bowel and bladder if she has on pull-on briefs and returning her to diapers will only cause for to go backward in her toileting efforts.

The Department's witness responded that in order for Medicaid to pay for pull-on briefs, the Department's policy criteria must be met. The Department's witness explained that the nurse assessor's determination that policy criteria were not met was forwarded to a Department pediatrician for review, and that the Department pediatrician concurred in the denial of pull-on brief authorization.

The evidence in this case supports the finding that at the time of the denial determination the Appellant did not meet the Department's policy criteria for Medicaid coverage of pull-on briefs.

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 decision is **AFFIRMED**.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

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cc:

Date Mailed: 9/3/2010

***** 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.