

**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. 2010-46440 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 ██████████. ██████████, adoptive mother, appeared on the Appellant's behalf. ██████████, Appeals Review Officer, represented the Department. ██████████, Michigan Department of Community Health (MDCH) Manager for ██████████, appeared as a witness for the Department.

ISSUE

Has the Department properly denied the Appellant continued coverage for 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 ██████████ old Medicaid beneficiary.
2. The Appellant has been diagnosed with developmental delays, urinary incontinence, autistic disorder, fetal alcohol syndrome, bowel incontinence, hypohydrotic ectodermal dysplasia, ADHD/Impulsive, cognitive delay and epilepsy. (Exhibit 1, pages 7 and 10)
3. The Appellant has been in pull-ons on and off since ██████████ (Exhibit 1, page 6)

4. Department policy only allows for coverage of pull-on briefs for beneficiaries ages 3-20 when there is the presence of a medical condition causing bowel/bladder incontinence and either 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. Medicaid Provider Manual, Medical Supplier Section, July 1, 2010, page 42.
5. The incontinent supply company, ██████████, conducted a nursing assessment on ██████████, for the purpose of addressing continued eligibility for pull-on briefs. (Exhibit 1, page 8)
6. The Appellant participates in a toilet training program at home and at school, but was out of school for the summer at the time of the ██████████ nursing assessment. (Exhibit 1, page 8)
7. The Appellant's adoptive mother reported that the quantity pull-on briefs can not be decreased. (Exhibit 1, pages 7-8 and 10)
8. A Department pediatrician reviewed and denied the request for continuing coverage of pull-on briefs. The Department determined that there was insufficient evidence of definitive progress in toilet training. (Exhibit 1, page 6)
9. On ██████████, the Department sent an Advance Action Notice denying ongoing pull-on brief coverage effective ██████████. (Exhibit 1, page 5)
10. On ██████████, the Appellant's mother filed a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health. (Exhibit 1, page 3)

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):

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 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.*

The Department asserts there is insufficient evidence of definitive progress to continue authorizing use of pull-on briefs. The Department Manager explained that pull-on briefs have been authorized at the maximum amount for Medicaid coverage on and off since ██████████, and continuously since ██████████. The ██████████ assessment notes indicate that it was not possible to obtain a school letter during the summer regarding toilet training progress, but the Appellant's adoptive mother reported that the quantity of pull-ons could not be decreased. (Exhibit 1, page 8)

The Appellant's mother asserts that the Appellant could not fit into the Medicaid policy criteria. She explained that it is not likely the Appellant will change, and all they can do is to keep trying the toileting program. She further testified that to participate in the toileting program at school, they require the Appellant to have pull-on briefs.

While this ALJ sympathizes with the Appellant's circumstances, she must review the action taken by the Department under the existing Medicaid policy. The applicable policy in this area is clear, pull-on briefs can only be covered for beneficiaries ages 3-20 when there is the presence of a medical condition causing bowel/bladder incontinence and either 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. The evidence in this case supports the finding that the Appellant does not have the cognitive ability to independently care for her toileting needs or that she has made definitive progress in a toileting program. A school letter would not have been expected to show definitive progress in the toileting program when the same quantity of pull-ons briefs was still needed. Accordingly, the Department's denial is upheld based on the available information.

A new request for pull-ons and/or supporting documentation, such as an updated school letter, can be submitted to the incontinent supply company, [REDACTED], who would then complete and updated review for pull-on brief eligibility.

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: [REDACTED]

Date Mailed 10/25/2010

***** 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.



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