

**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. 2010-47794 CL

██████████

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 ██████████, ██████████, mother, appeared on the Appellant's behalf. ██████████, 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

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 ██████████ Medicaid beneficiary.
2. The Appellant has been diagnosed with developmental delays, urinary incontinence, bowel incontinence, and Edwards syndrome. (Exhibit 1, page 8)
3. The Department has authorized pull-ons for the Appellant since about ██████████ (Department Manager Testimony)

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, J&B Medical, conducted a nursing assessment on ██████████, for the purpose of addressing continued eligibility for pull-on briefs. (Exhibit 1, page 9)
6. The Appellant's mother reported that she tries to toilet the Appellant an hour after drinking. (Exhibit 1, page 9 and Mother Testimony)
7. The Appellant also participates in a toilet training program at school and a letter was obtained from her teacher. (Exhibit 1, page 7)
8. There has been no decrease in the quantity of pull on briefs requested for the Appellant. (Department Manager Testimony)
9. 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 5)
10. On ██████████, the Department sent an Advance Action Notice denying ongoing pull-on brief coverage effective ██████████. (Exhibit 1, page 4)
11. 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 pull-on briefs. The Department Manager explained that pull-on briefs have been authorized at the same quantity for the past year. She stated that a decrease in the quantity of pull-on briefs used is expected if there has been definitive progress in toilet training. The Department explained that no definitive progress in toilet training was indicated by the school letter or by the Appellant's mother during the telephone nursing assessment. The letter from the Appellant's teacher does not indicate any changes in toilet training for the Appellant. (Exhibit 1, page 7) The [REDACTED] nursing notes indicates that Appellant's mother reported that she toilets the Appellant an hour after drinking, but the Appellant is usually wet, is not having bowel movements on the toilet, and is changed about eight times per day between diapers and pull-ons. (Exhibit 1, page 8)

The Appellant's mother asserts that the nursing assessment notes do not accurately document what she reported. However, she testified it is correct that at home she tries to toilet the Appellant toileted an hour after drinking. The Appellant's mother explained that the Appellant can not say when she needs to go to the bathroom, but she watches the Appellant's facial expression instead. The Appellant's mother testified that the Appellant does go to the bathroom on the toilet, is often dry overnight and is not always wet when she takes her to the toilet during the day.

The Appellant's mother stated that less product is being used at home, but acknowledged that she did not report this during the assessment. The Appellant's mother further testified that she gives half of the incontinent products to the school for use in the toileting program at the school, but she does not know what they do for the toileting program there.

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 the toileting program she has been participating in. The school letter did not show definitive progress in the toileting program, rather that the Appellant has been the same since this teacher has been with her, just under one year. (Exhibit 1, page 7) While the Appellant's mother disputes the accuracy of the telephone nursing assessment notes, her testimony did not clearly demonstrate definitive progress in toilet training. Further, no report was ever made to the medical supply company that fewer incontinent products were needed. Accordingly, the Department's denial is upheld based on the information available at the time of the assessment.

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

[REDACTED]
Docket No. 2010-47794 CL
Decision and Order

cc:

[REDACTED]

Date Mailed 10/29/2010

***** 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.