

**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. 2010-54983 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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, was present. She was represented by her son and power of attorney, ██████████, Appeals Review Officer, represented the Department. ██████████ Michigan Department of Community Health (MDCH) Manager for ██████████ 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 on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is an ██████████ Medicaid beneficiary. (Exhibit 1, page 5)
2. The Appellant is diabetic and urinary incontinent. (Exhibit 1, page 5)
3. On ██████████, a nursing assessment was conducted by telephone as a result of a request for incontinent supplies, including pull-on briefs, for the Appellant. At that time, the Appellant's daughter reported that the Appellant did not toilet independently. (Testimony of ██████████; Exhibit 1, page 6)

4. The Department denied the request for pull-on briefs. (Testimony of [REDACTED] Exhibit 1, page 4)
5. Department policy only allows for coverage of pull-on briefs when the beneficiary is either independent or needs minimal assistance with toileting. MDCH Medicaid Provider Manual, Medical Supplier Section, [REDACTED] pages 41-42. (Exhibit 1, page 7)
6. On [REDACTED], the Department sent the Appellant an Adequate Action Notice, advising that the pull-on briefs were not authorized because the information provided did not support coverage of this service. (Exhibit 1, page 4)
7. On [REDACTED] the Department received the Appellant's Request for Hearing. (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):

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. (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.

Incontinent wipes are covered when necessary to maintain cleanliness outside of the home.

Intermittent catheters are covered when catheterization is required due to severe bladder dysfunction.

Hydrophilic-coated intermittent catheters are considered for individuals that have Mitrofanoff stomas, partial stricture or small, tortuous urethras.

Intermittent catheters with insertion supplies are covered for beneficiaries who have a chronic urinary dysfunction for which sterile technique is clinically required.

Disposable underpads are covered for beneficiaries of all ages with a medical condition resulting in incontinence.

Documentation

Documentation must be less than 30 days old and include the following:


- Diagnosis of condition causing incontinence (primary and secondary diagnosis).
- Item to be dispensed.
- Duration of need.
- Quantity of item and anticipated frequency the item requires replacement.
- For pull-on briefs, a six-month reassessment is required.

*MDCH Medicaid Provider Manual,
Medical Supplier Section, July 1, 2010,
Pages 41-42.*

The Department's witness testified that during the ██████████, telephone assessment, the Appellant's daughter advised the nurse that the Appellant does not toilet herself. The witness stated that the daughter further advised that a lift and motorized wheelchair are used to toilet the Appellant and that the Appellant is not able to dress or undress herself or change her pull-on. (Exhibit 1, pages 6-7) The Department witness stated that policy requires the beneficiary to be either independent or need minimal assistance with toileting needs before pull-ons may be authorized. For example, the beneficiary must be able to stand up and pull the pull-on brief on and off. The Department witness explained that the Appellant did not meet this criteria based on her daughter's statements during the assessment.

The Appellant's representative disagreed with the denial. He explained that he and his brothers take care of the Appellant. He asked that the Department approve the pull-ons as a matter of dignity and respect. He explained that it is much easier to just assist their mother to pull up the briefs, rather than having to diaper their mother. Further, he stated that the Appellant is capable of assisting with toileting more than was stated by his sister at the assessment. For example, he stated that the Appellant can wipe herself after she uses the bathroom.

While this Administrative Law Judge sympathizes with the Appellant's circumstances, the evidence in this case supports the finding that the Appellant did not meet the Department's policy criteria for Medicaid coverage of pull-ons.


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However, if the Appellant's condition improves to the point of being able to toilet independently or with minimal assistance, then the Appellant may wish to make a new request for pull-ons.

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**.

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

cc: 

Date Mailed 12/10/2010

***** 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.