

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-55793 CL
Case No. 38700511

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 ██████████, appeared on behalf of the Appellant. ██████████, ██████████, represented the Department of Community Health (Department). ██████████, ██████████ ██████████ 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 ██████████ Medicaid beneficiary. (Exhibit 1, page 8)
2. The Appellant has been diagnosed with autism and developmental delay. (Exhibit 1, page 8)
3. The Appellant is enrolled in the ██████████ School District, where he is participating in a toilet-training program. (Exhibit 1, page 7)
4. An incontinent supply company contracted by the Department conducted a nursing assessment on ██████████, for the purpose of addressing the Appellant's continued need for pull-on briefs. (Exhibit 1, pages 8-10)

5. A Department pediatrician reviewed and denied the request for pull-on briefs. The Department determined that the Appellant appears to only need the pull-ons for nighttime bedwetting, which the Department deemed a behavioral condition, not a medical condition. In addition, the pull-ons are being used for transportation to and from school, which is also not covered by the Department. (Exhibit 1, page 6)
6. The Department sent an Advance Action Notice of the denial on ██████████. (Exhibit 1, page 5)
7. The Appellant's ██████████ filed a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████. (Exhibit 1, pages 3-4)

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; July 1, 2010;
Page 42*

The Department's witness explained that pull-ons were denied in this case because the Appellant appears to only need the pull-ons for travel to and from school and for nighttime bedwetting. She further explained that nighttime bedwetting is a behavioral condition, not a medical condition as required by policy. Further, the Department does not cover use of pull-ons for transport to and from school. According to the Department witness, during the initial telephone nursing assessment, the Appellant's ██████████ primarily discussed the Appellant's nighttime bedwetting. (Exhibit 1, page 9) The Department also explained that the letter from the Appellant's school stated that the Appellant participates in a toileting program and that he rarely, if ever, has an accident. (Exhibit 1, page 7) Finally, the Department's witness pointed out that the Appellant has been receiving pull-ons since ██████████, and pull-ons are considered a short-term, transitional product.

The Appellant's ██████████ testified that the Appellant has made great progress because of the use of pull-ons, but he is not fully toilet trained. She stated that they attempted to use underwear on the Appellant, but he dribbled on himself and was wet on the bus. She further testified that the Appellant is not dry at school all of the time as was reported to the Department. The Appellant's ██████████ explained that it is not convenient to toilet the Appellant as frequently as would be required to keep him dry without the pull-ons, and it is not convenient to use diapers in public because the Appellant will pull the diaper off himself.

Based on the information provided to the Department, its denial was proper. However, given the discrepancies between the nursing assessment notes and school letter and the Appellant's ██████████ testimony as to the Appellant's actual toileting abilities, a new nursing assessment would be beneficial, and the Appellant's ██████████ was encouraged at the hearing to pursue one.

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.

[REDACTED]
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Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 1/11/2011

***** 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.