

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. 2010-7039 CL

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████, the Appellant's mother, appeared on behalf of the Appellant.

██████████, Appeals Review Officer, represented the Department of Community Health (Department). ██████████, Contract Manager for the Department's Diaper and Incontinence Supplies 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

Based upon the competent, material and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. The Appellant is a ██████████ Medicaid beneficiary.
2. The Appellant suffers from CP, hydronephrosis, urinary incontinence, fecal incontinence, ADHD, and vision problems. (Exhibit 1, page 7)
3. The Appellant is enrolled at ██████████ where he is participating in a toilet training program. (Exhibit 1, page 6)
4. The Appellant has been participating in a toilet training program for approximately ██████████. (Exhibit 1, pages 8 and 11-12)

5. The Appellant's incontinent supply company conducted a nursing assessment in [REDACTED] for the purpose of addressing continued need for pull-on briefs. (Exhibit 1, page 8)
6. The Appellant requested the same amount of pull-on briefs as he had been receiving for the past [REDACTED] years. (Exhibit 1, pages 8)
7. 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 8)
8. The Department sent an Advance Action Notice of the denial [REDACTED]. (Exhibit 1, page 4)
9. The Appellant's mother filed a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED]. (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.

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.

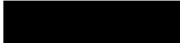
*Michigan Department of Community Health
Medicaid Provider Manual
Medical Supplier; Version Date: October 1, 2009;
Page 40*

The Department asserts there is insufficient evidence of definitive progress to continue authorizing use of pull-on briefs. It is uncontested pull-on briefs have been authorized for Medicaid coverage for at least ██████ years. It is also undisputed the same number of pull-on briefs were requested in the most recent request for authorization as the Appellant has been receiving for the past ██████ years.

The Department made their determination based upon the evidence available at the time of the ██████ assessment. During the telephone nursing assessment, the Appellant's mother stated the Appellant still needed 4-5 pull-on briefs per day, that he needs reminders and encouragement to go, and that he can go on his own for urination but has never had a bowel movement in the toilet. (Exhibit 1, page 8) The Department also explained that the letter provided by the Appellant's school failed to document definitive progress. The letter stated that the Appellant is in a bathroom plan, but the progress of the toileting program has not been established as it is just the beginning of the year. The letter further indicated that the Appellant was not independent in the bathroom nor does he consistently initiate the need to use the toilet. (Exhibit 1, page 6)

The Appellant's mother asserts that there has been definitive progress and testified that the Appellant can go a bit on his own now and has had some bowel movements in the toilet. However, she stated that this progress has occurred since ██████. The Appellant's mother testified that the statements she made during the ██████ nursing assessment were accurate at that time. The Appellant's mother also explained that the Appellant has a long history of illness and that he is currently on a diuretic as well as a laxative. She further stated that the Appellant has some sensory issues and that he feels uncomfortable in just underwear. For example, he wears a pull up when he goes to bed despite not urinating overnight.

While this ALJ understands that the Appellant has a long history of illness and may have made some recent progress, Department policy is clear in this area. The information available at the time of the assessment from the Appellant's mother and from the school did not establish that either of the two criteria for continuing eligibility had been met. The evidence does not show that the Appellant would not benefit from a bowel/bladder program but has the ability to independently care for his toileting needs or that he is actively participating and has made definitive progress in a toileting program. The Appellant does not have the ability to independently care for his toileting needs and the evidence shows he would benefit from a bowel/bladder program. Documentation


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of definitive progress in the toileting program the Appellant participated in was required for continuing eligibility. The information provided at the time of the assessment by the Appellant's mother and the school did not document definitive progress in the toileting program. Additionally there was no decrease in the amount of pull-on briefs requested over a two year period. This decision does not reflect a belief that the Appellant will never advance in toilet training, rather, this determination is only whether the authorization criteria for Medicaid coverage of pull-on briefs has been met.

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.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: 

Date Mailed: 1/27/2010

***** 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.