

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

**Docket No. 2010-16730 PA
Case No. [REDACTED]**

[REDACTED]

Appellant

_____ /

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 [REDACTED], Appellant's mother, represented the Appellant. [REDACTED] an independent [REDACTED] interpreter, provided interpreter services for the Appellant.

[REDACTED] represented the Department. [REDACTED], appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of Appellant's request for Peditasure?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is Medicaid eligible.
2. Appellant is an [REDACTED] year old girl with developmental delay [783.40] due to a chromosomal abnormality and is in the 95th percentile for weight and height. (Exhibit 1, pages 7-12)
3. A person who ranks in the 95th percentile for weight and height is considered obese [overweight].
4. On [REDACTED], the Department received a request for prior authorization of 1,707 cans of Peditasure for the Appellant was from [REDACTED] Appellant's pediatrician. (Exhibit 1, pages 7-9)

5. The request was reviewed by the Department and a Department physician, and was denied because the Appellant far exceeded the less than 5th percentile for weight and height Medicaid coverage criteria. (Exhibit 1, pages 7, 16)
6. On [REDACTED], the Department sent Appellant a written notice of denial. (Exhibit 1, pages 5-6)
7. On [REDACTED] the Department received Appellant's request for an Administrative Hearing. (Exhibit 1, page 2)

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.

During the hearing Appellant's Representative/mother testified that the Appellant is eight years old and weighs 39 pounds. Appellant's Representative/mother testified that Appellant cannot swallow normally, eat foods that a one and a half year-old would eat and prefers Pediasure. (Exhibit 1, page 2)

The Department Medicaid Provider Manual lists the criteria that a Medicaid beneficiary must meet in order for Medicaid to cover enteral nutrition such as Pediasure:

2.13.A. ENTERAL NUTRITION (ADMINISTERED ORALLY)

Enteral nutrition (administered orally) may be covered for beneficiaries under the age of 21 when:

- A chronic medical condition exists resulting in nutritional deficiencies and a three month trial is required to prevent gastric tube placement.
- Supplementation to regular diet or meal replacement is required, and the beneficiary's weight-to-height ratio has fallen below the fifth percentile on standard growth grids. (Underline added.)
- Physician documentation details low percentage increase in growth pattern or trend directly related to the nutritional intake and associated diagnosis/medical condition.

For CSHCS coverage, a nutritionist or appropriate subspecialist must indicate that long-term enteral

supplementation is required to eliminate serious impact on growth and development.

Standards of Coverage

For beneficiaries age 21 and over:

- The beneficiary must have a medical condition that requires the unique composition of the formula nutrients that the beneficiary is unable to obtain from food.
- The nutritional composition of the formula represents an integral part of treatment of the specified diagnosis/medical condition.
- The beneficiary has experienced significant weight loss.

Documentation

Documentation must be less than 30 days old and include:

- Specific diagnosis/medical condition related to the beneficiary's inability to take or eat food.
- Duration of need.
- Amount of calories needed per day.
- Current height and weight, as well as change over time. (For beneficiaries under 21, weight-to-height ratio.)
- Specific prescription identifying levels of individual nutrient(s) that is required in increased or restricted amounts.
- List of economic alternatives that have been tried.
- Current laboratory values for albumin or total protein (for beneficiaries age 21 and over only).

For continued use beyond 3-6 months, **the CSHCS Program requires** a report from a nutritionist or appropriate pediatric subspecialist.

PA Requirements PA is required for all enteral formula for oral administration.

The Department's witness testified that in order for Appellant to have Medicaid pay for Pediasure, the Appellant must meet the three (3) policy criteria. The Department's witness testified and introduced overwhelming credible evidence that the Appellant did not meet the criteria that required her weight-to-height ratio to be below the 5th percentile criteria. Based on the document evidence the Department's witness demonstrated that Appellant far exceeded the less than 5th percentile for weight and height Medicaid coverage criteria because her doctor's medical notes showed she is above the 95th height to weight percentile criteria. The Department's witness explained that a person who ranks in the 95th percentile for weight and height is considered obese and being overweight is a health risk in itself.

The Appellant's Representative/mother explained that she felt the Appellant should be taller for her age, and that she had other children and did not work, and thus could not afford to feed her child without the cans of Pediasure.

The Department's coverage criteria for Pediasure are clear and Appellant's weight-to-height ratio far exceeded the Department's less than 5th percentile criteria. For this reason, the Department's action to deny coverage of Appellant's request for Pediasure was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department acted in accordance to policy when denying coverage of Appellant's request for Pediasure.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 4/26/2010

***** 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.