

**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. 2010-17434CL

██████████

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 ██████████. ██████████ appeared on his own behalf. ██████████, RM case manager, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Michigan Department of Community Health (MDCH) Contract Manager for Diaper and Incontinence Program, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of diaper and incontinence supplies?

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 multiple sclerosis CVA. (Exhibit 1, page 5)
3. On ██████████ a telephone nursing assessment was conducted as a result of a request for diaper and incontinence supplies. The Appellant reported that he is incontinent of bladder at night resulting in dribbling because he has trouble getting out of his hospital bed with side rail to get to the bathroom. (Exhibit 1, page 5)

4. On [REDACTED] the Department sent the Appellant an Adequate Action Notice that diaper and incontinence supplies shall not be authorized because the information provided did not support coverage of this service. (Exhibit 1, page 4).
5. 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, October 1, 2009, Pages 39-40. (Exhibit 1, Pages 6-7).

The Department's witness testified that during the ██████████, telephone assessment, the Appellant reported that he is only incontinent at night explaining that he sleeps in a hospital bed with the side rail up and has trouble getting out to get to the bathroom, therefore he may dribble walking to the bathroom. (Exhibit 1, page 5) The Department witness stated that policy requires a medical condition resulting in incontinence with no response to a bowel/bladder program. The Department witness explained that the Appellant did not meet this criteria based on his statements. The Department witness stated that it appears the Appellant is trained for bowel/bladder, he does not have any daytime incontinence problems, and that dribbling is not incontinence.

The Appellant disagrees with the denial and testified that it is hard for him to get out of bed at night. The Appellant explained that he has tried alternatives such as a urinal, which did not work for him as he may not recall if it is partially full resulting in spills when he has to use it again. The Appellant also stated that the dribbling is not a small amount, and his bladder may be half empty by the time he gets to the bathroom.

The Appellant's witness testified that due to the embarrassing nature of incontinence, the Appellant may not have been forthcoming with details during the telephone nursing assessment. The Appellant's witness also stated that the Appellant's multiple sclerosis has recently progressed resulting in further mobility problems, dizziness and falls at night.

While this ALJ understands that this is a difficult topic to discuss, the Department only had the information provided by the Appellant during the telephone nursing assessment to make a determination. The evidence in this case supports the finding that the Appellant did not meet the Department's policy criteria for Medicaid coverage of diaper and incontinence supplies based on the information available at the time of the assessment.


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If he has not already done so, the Appellant may wish to submit a new request for diaper and incontinence supplies as suggested by the Department witness. The Appellant could authorize his RN case manager to participate in the nursing assessment to discuss the details of the Appellant's circumstances and a statement from his doctor could be obtained.

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 diaper and incontinence supplies was in accordance with Department policy criteria based on the information reported during the nursing assessment.

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: 4/19/2010

***** 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.