

**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

**Docket No. 2010- 22374 CL
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]. [REDACTED], Appellant, appeared on his own behalf. [REDACTED], represented the Department. [REDACTED], Michigan Department of Community Health (MDCH) Manager for Diaper and Incontinence Supplies Program, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of incontinence products?

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 [REDACTED] year-old man with perianal fistula disease including drainage. (Exhibit 1, Page 4, 6).
2. The Appellant is a Medicaid beneficiary.
3. On or around [REDACTED], Appellant's physician requested authorization to receive incontinence products (adult diapers). (Exhibit 1, Page 5-6).
4. On [REDACTED], a nursing assessment was completed as a result of the request for authorization of Appellant's incontinence products. (Exhibit 1, Page 6).
5. On [REDACTED], the Department sent Appellant an Advance Action Notice that the incontinence products, "shall not be authorized," effective [REDACTED], because, "the information submitted does not support coverage of this service." (Exhibit 1, Pages 5, 8).

6. On [REDACTED], the Department received Appellant's Request for Hearing. (Exhibit 1, Page 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.

The Department policy regarding coverage of incontinence products, including incontinence products, 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.

*MDCH Medicaid Provider Manual,
Medical Supplier Section,
January 1, 2010, Pages 39-40. (Exhibit 1, pp 7-8).*

The Department's witness testified that during the [REDACTED] telephone assessment, the nurse assessor learned that the Appellant was not incontinent. The Department's witness further testified the nurse assessor determined that because the Appellant allegedly denied incontinence, he did not have a medical condition for which Michigan Medicaid policy covered incontinence products.

The Appellant testified that he has perianal fistula disease with drainage and because the drainage can happen at any time, the drainage soils his clothes. The Appellant explained that if he wears incontinence products it prevents his clothes from being soiled by the fistula drainage. Appellant testified he had surgeries to address the fistula, but the surgeon cut too much resulting in intermittent incontinence of the bowels, and the incontinence products help the process of keeping the fistula clean. The Appellant also stated his doctor believes he should have the incontinence supplies and wrote a letter to that regard which was submitted with his request for hearing.

The Department's witness responded that in order for Medicaid to pay for incontinence products, the Department's policy criteria must be met. The Department's witness explained that the nurse assessor's determination that policy criteria were not met was supported because his diagnosis and need was for continuous drainage, and not for a diagnosis of incontinence.

The Department's representative objected to an admission of a [REDACTED] letter from Appellant's physician describing his "chronic drainage" and "intermittent incontinence" because the letter was not available to the Department at the time of its [REDACTED] determination. The Department's objection to admission of the letter from Appellant's physician was sustained and it was noted that the Appellant could utilize the letter if he subsequently requested authorization of incontinence products.

The evidence in this case supports the finding that at the time of the denial determination the Appellant did not meet the Department's policy criteria for Medicaid coverage of incontinence products.

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 incontinence products was in accordance with Department policy criteria.

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

Case Name [REDACTED]
Docket No. 2010-22374 CL
Hearing Decision & Order

cc: [REDACTED]

Date Mailed: 05/12/2010

***** 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.