

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-2739 CL
Case No. ██████████

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 ██████████. ██████████ appeared on behalf of his minor son, ██████████ (Appellant). Also appearing as a witness for the Appellant was his ██████████, ██████████.

██████████, Appeals Review Officer, represented the Department of Community Health (Department). Also appearing as a witness for the Department was ██████████, Contract Manager for the Department's Diaper and Incontinence Supplies Program.

ISSUE

Has the Department properly denied Appellant coverage for pull-on diapers?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence presented, I find, as material fact:

1. Appellant is a ██████████ Medicaid beneficiary who is diagnosed with Autism Spectrum Disorder with cognitive impairments. He is incontinent of both bowel and urine, is non-verbal. As of an ██████████, assessment, the Appellant participates in school toilet training, but cannot yet get to the toilet on his own. On a scale of 0-10 (with 10 being the best), in an average day, the Appellant never voids in the toilet without wetting himself first. (*Exhibit 1; p. 11*)

2. On [REDACTED], [REDACTED] nursing assessments were completed by [REDACTED], the contractor for the State of Michigan Diapers and Incontinent Supplies Program. The Appellant has requested that he again be provided pull-ons. The request to re-start pull-ons was reviewed and denied on the basis that the required information to support the request did not demonstrate definitive progress in a bowel/bladder training program.
3. The [REDACTED] provides, in pertinent part, as follows:

“...Client does not communicate need to toilet. He will pull up and down pullons and sit on toilet. He very rarely urinates on toilet. 1-3X a week. He will not have bowel movement on toilet.” “...never wakes up dry. Father states he does not like diapers and they are hard to manage.”

“Client has been denied pullons twice this year, already for lack of progress. CG states that he must struggle to get client to wear diapers. Child is autistic, 10 yrs old and resistant to change. CG said he can no longer afford pullons. CG said the school is not working on toileting just take him 3 times/day to the toilet.” “...CG said client does not initiate toileting; he needs 8-9 changes/day. Client does not take his pants down and follow directives when CG has him at the toilet.”

(Exhibit 1; p. 9)
4. On [REDACTED], the Appellant was issued a letter of denial regarding the requested pull-ons.
5. On [REDACTED] the Appellant filed his Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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.

INCONTINENCE SUPPLIES; STANDARDS OF COVERAGE

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 ages 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 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. (Emphasis supplied by ALJ)

Documentation of the reassessment must be kept in the beneficiary's file.

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A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfies that burden must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

Thus, the Appellant must demonstrate, by a preponderance of the evidence, that he meets current criteria for pull-ons.

Above-cited policy is clear. Incontinence supplies are covered in the presence of a medical condition resulting in incontinence and there is no response to a bowel/bladder training program, or when the medical condition being treated results in incontinence, and a beneficiary would not benefit from or has failed a bowel/bladder training program.


The record contains ample evidence that the Appellant is making little definitive progress in his current bowel and bladder training program. The ██████████ assessment provides evidence that the Appellant refuses direction once on the toilet, that he never wakes up dry or that he is otherwise demonstrating an interest in using a toilet. Additionally, the Department witness credibly testified that the Appellant's use of Medicaid-supplied incontinence products has not decreased indicating that little if any progress is being made.

The Appellant's father testified he continues to work with the Appellant's toilet training issues. The Appellant's grandmother testified the Appellant was not properly toilet trained while in the custody of his mother, and that the Appellant has only recently come to live with his father. However, neither of these witnesses provided substantive medical evidence that the Appellant is making definitive progress in his current program.

Accordingly, I conclude the Appellant is ineligible for pull-ons under current policy.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department has appropriately denied the Appellant's request for pull-ons.


Docket No. 2010-2739 CL
Decision and Order

IT IS THEREFORE ORDERED that:

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

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: 

Date Mailed: 12/3/2009

***** 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.