

**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. 2010-2740 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., upon the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. ██████████ represented ██████████.

██████████, represented the Department. ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the request for an increase in diaper liners?

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 ██████████ male who has multiple medical issues. He is incontinent of bowel and bladder. (uncontested)
2. The Appellant is wheel chair bound. He weighs ██████████.
3. The Appellant takes in a lot of fluids daily as a result of his medical conditions.
4. The Appellant is approved for 300 double liners for use in his diapers each

month.

5. The Appellant's mother uses 5-7 liners with each diaper change. She reportedly changes his diapers 9-13 times per day.
6. The Appellant asserts the number of liners used with each change is medically necessary, as are the number of diaper changes each day.
7. The Appellant asserts skin breakdown as a result of inadequate supplies approved by the Department.
8. Department of Community Health physician review of the request for an increase in diaper liners resulted in a finding that medical necessity for an increase from 300 double liners to 600 double liners was not established by the records provided to the Department.
9. On ██████████, the Department notified the Appellant the number of liners provided by the Department would not be increased.
10. On ██████████, the Department received Appellant's Request for Hearing, protesting the denial.

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.

New Department policy regarding Medicaid covered incontinent supplies went into effect on April 1, 2005. The new policy appeared first in the form of a MSA Bulletin and was incorporated into the Medicaid Provider Manual on April 1, 2005, where it remains currently.

The Department policy on pull-on brief coverage, as addressed in the MDCH Medicaid Provider Manual:

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. (Emphasis added.)

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. **(per bulletin MSA 05-12 effective 4/1/05)**

Continued Coverage for Pull-On Briefs: 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. Documentation of the

reassessment must be kept in the beneficiary's file. (per bulletin MSA 05-12 effective 4/1/05)

Continued Coverage for Pull-On Briefs: 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. 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.

Disposable underpads are covered for beneficiaries of all ages with a medical condition resulting in incontinence.

Documentation must be less than 30 days old and include the following:

- Diagnosis of condition causing incontinence (primary & secondary diagnosis).
- Item to be dispensed.
- Duration of need.
- Quantity of item and anticipated frequency the item requires replacement.
- For pull-up briefs, a six-month reassessment is required.

*MDCH Medicaid Provider Manual, Medical Supplier Section,
effective July 1, 2007.*

The Appellant has been approved for Medicaid coverage of 300 double liners (600 single) per month. This is 2 times the normal maximum approval for incontinent beneficiaries. This approval was based upon consideration of the Appellant's medical status and special needs, resultant from his multiple medical conditions. The Department recognized his need by approving an amount 2 times the normal maximum

number of liners provided by the incontinent supply program.

The Appellant's mother stated she has inadequate supplies to address his needs and supplied correspondence from her son's doctor and a prescription for 600 double liners. The Appellant's doctor indicates the liners are poor quality, thus 7 are used with each diaper change. The doctor reports, per report of mother, that 9-13 diaper changes are done each day, thus there is a medical need for additional liners. The doctor further stated on [REDACTED], that the Appellant's skin is immaculate and he is being provided excellent care. Then in a letter dated [REDACTED], she indicates the Appellant was suffering a rash and blisters. The Department doctor reviewed the correspondence from the doctor and requested the medical records themselves be provided. In response to the request for the actual medical records, a one page document was submitted dated [REDACTED], evidencing complaints of rash to buttocks and penis. The Department doctor reviewed the one page of medical record submitted and did not change the Department's position on the request for an increase in supplies. The Department doctor referred back to the [REDACTED] correspondence indicating the Appellant's skin was intact and impeccable and the doctor's statement that she occasionally calls in medication for the Appellant. The doctor opined, that based upon the documentation submitted, the Appellant's condition was not severe enough to justify an increase in supplies.

The Appellant's mother asserts there is medical need and justification for the increase and asserted the relevant policy does not establish a limitation on the number of liners that can be authorized. The Department's witness stated at hearing the determination to deny the request for additional liners was based upon the medical necessity of the Appellant and not based upon the contract between the Department and its incontinent supplier, [REDACTED], which had been cited at hearing earlier.

This Administrative Law Judge finds the Department's denial in accord with established policy and supported by the medical documentation that was supplied. The medical documentation supplied establishes the Appellant has special needs with respect to his incontinence supplies. The evidence of record establishes the Department has accommodated those needs by authorizing 2 times the normal number of liners supplied to incontinent Medicaid beneficiaries. This was found adequate by the Department's physician, following review of the medical records in evidence. This ALJ considered the position asserted by the Appellant that she used to have adequate supplies delivered, thus her son's skin condition was good. Following the decrease in supplies being delivered, she was no longer able to keep his medical condition the same, thus he incurred the rash. While there is medical support for a finding that he did not have a rash in [REDACTED] when seen by the doctor and that he did in [REDACTED] when seen again, the Department contested the assertion that there was a decrease in the amount of supplies authorized, thus asserted no causal connection. The Department cited records of authorization that did not exceed her current authorization, dating back 5 years. The Appellant's mother stated she knows how much she was being given and is not lying about the claim that her supplies were decreased.

[REDACTED]
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She presented no documentation to support her claim that her authorization was decreased. There was no medical evidence presented to support a claim that the number of liners supplied was inadequate, causing the Appellant to suffer his rash. In fact, there was no evidence of a re-occurrence of a rash. There was evidence the Appellant's mother complained of one occurrence of a rash. There was no evidence brought forth compelling a determination that there is a medical necessity for liner supplies beyond what was already authorized. The Appellant did not meet her burden of proof, establishing a medical necessity for additional diaper liners.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department properly denied the request for increase in diaper liners.

IT IS THEREFORE ORDERED that

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

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 1/15/2010

***** 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.