

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. 2010-41156 CL

██████████

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 ██████████. ██████████, the Appellant's parents, appeared on behalf of the Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health (Department). ██████████, Contract Manager for the ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant coverage for pull-on briefs?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. The Appellant is a ██████████ Medicaid beneficiary. (Exhibit 1, page 7)
2. The Appellant suffers from cerebral palsy, shaken baby syndrome, right-side weakness, severe mental retardation, and incontinence. (Exhibit 1, page 7)
3. The Appellant is enrolled in the ██████████, where she is participating in a toilet-training program. (Exhibit 1, page 6)
4. An incontinent supply company contracted by the Department conducted a nursing assessment on ██████████, for the purpose of addressing the Appellant's need for pull-on briefs. (Exhibit 1, page 11)

5. On [REDACTED], the Department approved pull-ons for the Appellant for a two-month trial, pending receipt of a letter from the Appellant's school. (Exhibit 1, page 11)
6. On [REDACTED], the incontinent supply company conducted a second nursing assessment, to determine the Appellant's continued need for pull-ons. (Exhibit 1, pages 7-9)
7. On [REDACTED], the Department received a letter from the Appellant's school regarding her toilet-training program. It stated that the Appellant is toileted three times per day, she does not initiate toileting on her own, and the staff has to pull her pants on and off and wipe her. (Exhibit 1, page 6)
8. A Department pediatrician reviewed and denied the request for pull-on briefs. The Department determined that there was insufficient evidence of definitive progress in toilet training. (Exhibit 1, page 5)
9. The Department sent an Advance Action Notice of the denial on [REDACTED] (Exhibit 1, page 4)
10. The Appellant's father filed a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED]. (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 Medicaid Provider Manual addresses the authorization of pull-ons as follows:

Section 2.19 Incontinent Supplies; Standards of Coverage

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 in, 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 following applies:

- 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.

*Michigan Department of Community Health
Medicaid Provider Manual
Medical Supplier; April 1, 2010;
Page 40*

The Department asserts that there is insufficient evidence of definitive progress to authorize use of pull-on briefs. The Department's witness defined definitive progress as "less and less product being used and the child being able to do more of the toileting for themselves."

According to the Department witness, in ██████████, a letter was provided by the Appellant's school, which failed to document definitive progress. The letter stated that the Appellant participates in a toileting program, but she is unable to initiate toileting, she is unable to pull her pants up and down, and she is unable to wipe herself.

The Appellant's parents testified that there has been progress. They explained that the Appellant is severely handicapped, but she is starting to communicate when she has to use the bathroom. They further testified that they use less pull-ons than diapers, and they expressed that the Appellant has a great deal of enjoyment when she does use the toilet. They stated that the pull-ons give the Appellant a little bit of dignity.

The Department's denial was proper. There is insufficient evidence of definitive progress toward toilet training in this case. The Appellant is unable to initiate toileting on her own, and she is unable to take care of any of her toileting needs, i.e. take her pants on and off or wipe herself. However, should that change, the Appellant may request a new nursing assessment at that time.

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 pull-on briefs was proper.

[REDACTED]
Docket No. 2010-41156 CL
Decision and Order

IT IS THEREFORE ORDERED that:

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

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 9/17/2010

***** 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.

