

**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. 2010-41157 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ appeared and requested that her daughter appear on her behalf. ██████████, daughter, appeared as the Appellant's representative. ██████████, Appeals Review Officer, represented the Department. ██████████, Michigan Department of Community Health (MDCH) Manager for Diaper and Incontinence Program, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of incontinent wipes?

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 is a ██████████ who has been diagnosed with bowel cancer. (Daughter Testimony)

3. On ██████████, an initial nursing assessment was conducted as a result of a request for incontinent supplies, pull on briefs, liners, gloves and wipes, for the Appellant. It was reported that the Appellant is virtually homebound and does not toilet away from home. (MDCH Manager Testimony and Exhibit 1, page 6)
4. The Department approved the request for pull on briefs, liners, and gloves for the Appellant, but not the incontinent wipes. (MDCH Manager Testimony)
5. Department policy only allows for coverage of incontinent wipes when necessary to maintain cleanliness outside of the home. Medicaid Provider Manual, Medical Supplier Section, July 1, 2010, page 42. (Exhibit 1, page 8)
6. On ██████████, the Department sent the Appellant an Adequate Action Notice that the incontinent wipes were not be authorized because the information provided did not support coverage of this service. (Exhibit 1, page 5)
7. On ██████████ 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.

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

MDCH Medicaid Provider Manual, Medical Supplier Section, July 1, 2010, Pages 41-42. (Exhibit 1, pages 7-8)

The MDCH Manager testified that during the ██████████, telephone assessment, it was reported that the Appellant is virtually homebound and does not toilet away from home. (See Exhibit 1, page 6) She explained that the Appellant does not qualify for incontinent wipes because these are only covered to maintain cleanliness outside of the home.

The Appellant's daughter disagrees with the Department policy to not cover the use of wipes in the home. She explained that the alternative is not hygienic. She also testified that the aloe in the wipes helps with healing. However, she stated that the Appellant plans to discontinuing the other incontinent products because she has been doing better with her bowels, but may need to restart this service once chemotherapy begins.

While this ALJ understands the Appellant's concerns, she does not have the requisite constitutional or equitable authority to change or override Department policy and must review the action taken by the Department under the existing Medicaid policy. The applicable policy in this area is clear, incontinent wipes are only covered to maintain cleanliness outside of the home. The evidence in this case supports the finding that the Appellant did not meet the Department's policy criteria for Medicaid coverage of incontinent wipes because she does not toilet away from home. Accordingly, the Department's denial must be upheld.


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 incontinent wipes was in accordance with Department policy criteria.

IT IS THEREFORE ORDERED that:

The Department's decisions are **AFFIRMED**.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health


Docket No. 2010-41157 CL
Decision and Order

cc:



Date Mailed 9/17/2010

***** 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.