

**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. 2010-45563 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 ██████████, caregiver, appeared on the Appellant's behalf. ██████████, Appeals Review Officer, represented the Department. ██████████, Michigan Department of Community Health (MDCH) Manager for ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of incontinent supplies?

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 arteriosclerotic heart disease, history of cerebrovascular accident with deficits, dementia, degenerative joint disease/osteoarthritis, peripheral vascular disease, incontinence, and benign prostatic hyperplasia/nocturia. (Exhibit 1, page 4)

3. On ██████████, a telephone nursing assessment was conducted as a result of a request for incontinent supplies, specifically underpads, gloves, and wipes, for the Appellant. It was reported that the Appellant toilets appropriately having an accident once in a while but is incontinent overnight or urine. (Exhibit 1, page 6)
4. Department policy only allows for coverage of disposable underpads when there is a medical condition resulting in incontinence. Incontinent wipes are only covered when necessary to maintain cleanliness outside of the home. Documentation must be less than 30 days old and include the diagnosis of condition causing incontinence (primary and secondary diagnosis). Medicaid Provider Manual, Medical Supplier Section, July 1, 2010, page 42. (Exhibit 1, page 8)
5. On ██████████, the Department sent the Appellant an Adequate Action Notice that all incontinent products were not be authorized because the information provided did not support coverage of this service. (Exhibit 1, page 5)
6. On ██████████, the Department received a Request for Hearing filed on the appellant's behalf. The hearing request was resubmitted on ██████████ with the Appellant's signature. (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.

Standards of Coverage (Not Applicable to CSHCS Only Beneficiaries)

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.

Intermittent catheters with insertion supplies are covered for beneficiaries who have a chronic urinary dysfunction for which sterile technique is clinically required.

Documentation

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

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

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

The MDCH Manager asserted that the Appellant does not meet the standards of coverage for incontinence products. At the [REDACTED], telephone assessment, it was reported that the Appellant toilets appropriately having an accident once in a while, but is incontinent overnight or urine. (See Exhibit 1, page 6) The Department manager testified that incontinence of urine overnight is considered a behavioral condition and not a medical condition. She explained that the Appellant's request for incontinence products was denied because the standards of coverage for incontinence supplies requires a medical condition resulting in incontinence.

The Appellant's caregiver disagrees with the Department's denial and testified that the Appellant has been incontinent during the day since his stroke. She explained that the Appellant can not wear underwear, has bed sores, and does not always make it to his potty chair. The Appellant's caregiver stated that she would like diapers, but the Appellant does not want these because they are confining and bother him. A DHS 54-A

Medical Needs form was submitted with the request for hearing, documenting the Appellant's multiple medical diagnoses. However this form was completed by the Appellant's physician on [REDACTED] and therefore would not have been available to the Department on [REDACTED] when this request for incontinence products was reviewed.

The applicable policy in this area is clear, disposable underpads are only covered when there is a medical condition resulting in incontinence and incontinent wipes are only covered to maintain cleanliness outside of the home. The information available at the time of the [REDACTED] request did not establish a medical condition resulting in incontinence or that wipes are needed for cleanliness outside the home. The evidence does not indicate a request was made for diapers, but policy would again require a medical condition resulting in incontinence for coverage. Accordingly, the Department's denial must be upheld based on the information available at the time of the request.

The Appellant's caregiver's testimony indicates that the Appellant is not just incontinent of urine overnight, but rather that he has medical conditions that result in incontinence and is also incontinent during the day. A new request for incontinence supplies can always be submitted with documentation to support the standards of coverage. A new telephone nursing assessment would be conducted where more detailed and updated information regarding the Appellant's incontinence issues should be reported. The Department Manager indicated she would forward the DHS 54-A Medical Needs form to the medical supply company, but also suggested that the Appellant request a letter from his doctor focusing on the incontinence issues to support the new request for incontinence supplies.

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 supplies was in accordance with Department policy criteria.

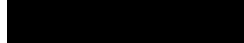
IT IS THEREFORE ORDERED that:

The Department's decisions are AFFIRMED.

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

cc:

[REDACTED]


Docket No. 2010-45563 CL
Decision and Order

Date Mailed 10/29/2010

***** 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.