

**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. 2010-55561CL

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant was represented by ██████████. His witness was ██████████. ██████████, appeals review officer, represented the Department. Her witness was ██████████, Medicaid analyst.

ISSUE

Did the Department properly deny coverage of Pull-on briefs?

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. (Appellant's Exhibit #1)
2. The Appellant is afflicted with multiple congenital anomalies and Digeorge's Syndrome Seizures – he is cognitively impaired. (Department's Exhibit A, p. 8 and Appellant's Exhibit #1)
3. According to the Appellant's teacher, ██████████, the pull-on diaper is a benefit to ██████████. Further communication with the school, however, requested the approximate number of daily changes necessary – that information was never provided to ██████████ or the Department. (See Department's Exhibit A – throughout)

4. On ██████████, a nursing assessment was conducted by supplier ██████████ on the Appellant's request for continuation of Pull-on briefs. (Department's Exhibit A, pp. 8, 9)
5. The request was reviewed by the Department and denied for lack of establishing definitive progress per Medicaid policy as the Appellant has been on Pull-on briefs for over five years. A decrease in product use should be observed. (Department's Exhibit A, p. 6 and See Testimony of ██████████)
6. On ██████████, a letter was mailed to the Appellant advising him of the denial. He was further informed of his appeal rights. (Department's Exhibit A, p. 5)
7. The request for pull-on briefs was reviewed by OMA staff pediatrician, ██████████ who concurred with the analyst's denial stating "should show a gradual decrease in the amount of product used." (Department's Exhibit A, p. 6)
8. On ██████████, the instant appeal was received by the State Office of Administrative Hearings and Rules (SOAHR). (Appellant's Exhibit #1)

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 for pull-on brief coverage is addressed in the Medicaid Provider Manual:

[] 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 supplied)

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.

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.

Medicaid Provider Manual (MPM) Medical Supplier, October 1
1, 2010¹, page 42

The Department witness testified that the Appellant is not successful in meeting the Medicaid program requirements for continued authorization of pull-on briefs as he demonstrated neither definitive progress in a toilet training program, nor decreased product use. This conclusion was shared, on review, by MDCH pediatrician, ██████████
██████████

Required documentation from the Appellant's school did not support the Appellant's use of pull-on briefs.

The Appellant's representative argued that the Appellant destroys more diapers than pull-on briefs during his daily routine and that it is wasteful to use diapers versus pull-ons. The Appellant's witness testified that she believed the school system was "shorting them" because she did not know how many pull-ons came per box.

While the testimony documented that owing to the Appellant's disability and size that pull-ons are easier to use for those attending to the Appellant, there was no demonstration of program compliance as required under the Medicaid Provider Manual.

The evidence provided by the Department established that the Appellant has made little or no documented progress in his home and school-based toilet training program. The Appellant's representative has failed to provide any evidence that the Appellant has made definitive improvement [as required under the MPM] concerning the toileting program.

Therefore, the denial of coverage for pull-on briefs 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 properly denied coverage of pull-on briefs.

¹ This segment of the MPM is identical to that which was in place at the time of appeal.

IT IS THEREFORE ORDERED that

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

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 12/20/2010

***** 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.