

**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. 2011-11531 CL
Case No. 20940885

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 on the Appellant's behalf. ██████████, represented the Department. ██████████ Michigan Department of Community Health (MDCH) ██████████, appeared as a witness for the Department.

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 ██████████ Medicaid beneficiary.
2. The Appellant has been diagnosed with hypertension, hyperlipidemia, anxiety, CP with paraplegia, cataract, mental retardation, wheelchair bound, hypothyroid, short stature, bowel and urinary incontinence, and probable genetic disorder. (Exhibit 1, page 12)
3. On ██████████, a telephone nursing assessment was conducted as a result of a request for pull-on briefs. It was reported that the Appellant is continent of urine 50% of the time and is unable to ambulate therefore a hooyer lift is used to transfer to the commode. It was also reported that the Appellant is unable to assist with pulling a pull-on up or down due to paralysis of the right arm and needing to hang on with the left

arm because she is unable to stand on her own. (Exhibit 1, page 15)

4. On [REDACTED], the Department sent the Appellant an Adequate Action Notice that pull-ons shall not be authorized because the information provided did not support coverage of this service. (Exhibit 1, page 3).
5. On [REDACTED], the Department received the Request for Hearing filed on the Appellant's behalf. The hearing request was resubmitted on [REDACTED], with the Appellant's signature and documentation of guardianship. (Exhibit 1, page 2)

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:

- o Independent care of bodily functions through proper toilet training.
- o Appropriate self-catheter care to decrease risk of urinary infections and/or avoid bladder distention.
- o 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:

- o 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.

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.

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

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.*

The Department's witness testified that under the Department policy, the Appellant did not meet the criteria for pull-ons based on the information reported during the ██████████ telephone assessment. The policy requires a medical condition resulting in incontinence and the ability to care for her toileting needs independently or with minimal assistance from a caregiver. During the ██████████ telephone assessment it was reported that the Appellant is continent of urine 50% of the time and is unable to ambulate therefore a hooyer lift is used to transfer to the commode. It was also reported that the Appellant is unable to assist with pulling a pull-on up or down due to paralysis of the right arm and needing to hang on with the left arm because she is unable to stand on her own. (Exhibit 1, page 15) The Department witness explained that based on these reports, the Appellant does not meet the criteria for coverage of pull-ons because she is not able to care for her toileting needs independently or with minimal assistance from a caregiver.

The Appellant's representative disagrees with the denial and testified that the Appellant's life is at risk if pull-ons are not used. She explained that the Appellant is not able to stand to go through the process of caring for her toileting needs with a tabbed product like diapers. The Appellant's representative further stated that the Appellant is now outgoing and confident, and can use pull-ons when she goes out in public. This will not be possible without the pull-ons because there are no public facilities to accommodate laying the Appellant down to change a diaper. (██████████ Testimony)

While this ALJ sympathizes with the Appellant's circumstances, she must review the action taken by the Department under the existing Medicaid policy. The applicable policy in this area is clear, pull-ons for beneficiaries age 21 and over are only covered when there is the presence of a medical condition causing bowel/bladder incontinence

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and the beneficiary is able to care for her toileting needs independently or with minimal assistance from a caregiver. Department policy does not allow for coverage of pull-ons in the Appellant's circumstance, unable to care for her toileting needs independently and requiring more than minimal assistance from a caregiver. 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 pull-on briefs was in accordance with Department policy.

IT IS THEREFORE ORDERED that:

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

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 4/20/2011

***** 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.