

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2011-32506 CL

Case No ██████████

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

ISSUE

Has the Department properly denied the Appellant coverage for all incontinent products?

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 ██████-year old Medicaid beneficiary.
2. Department policy only allows for coverage of diapers, incontinent pants, liners, belted/unbelted undergarments without sides and pull-on briefs when there is a medical condition resulting in incontinence. Medicaid Provider Manual, Medical Supplier Section, January 1, 2011, page 42.
3. The incontinent supply company conducted an initial nursing assessment on ██████████ ██████████, due to a call requesting incontinent supplies. The Appellant's diagnoses were reported as developmental delay, nocturnal enuresis and ADHD. It was also reported that the Appellant is not in bowel/bladder training, only has incontinence during the day 1-2 times per week, but wets heavily overnight. (Exhibit 1, pages 7-8)

4. Nocturnal enuresis, developmental delay and cognitive impairments are considered by the State's pediatrician to be behavioral conditions, rather than medical conditions. (Contract Manager Testimony)
5. On [REDACTED], the Department sent an Adequate Action Notice denying coverage for all products. (Exhibit 1, page 6)
6. On [REDACTED], the Request for Hearing filed on the Appellant's behalf was received. (Exhibit 1, page 6)

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 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.
- o 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,
January 1, 2011, Pages 41-42.*

The Department asserts there is insufficient evidence of a medical condition to support coverage of incontinent supplies. The Contract Manager explained that the nursing assessment notes indicate that the Appellant is basically toilet trained during the day and has nocturnal enuresis, or nighttime bed wetting. She explained that the Department considers this to be a behavioral condition, rather than a medical condition. Accordingly, the Appellant did not qualify for incontinent supplies. (Contract Manager Testimony)

The Appellant's mother disagrees with the denial and testified they struggle with potty training all the time and the Appellant is not able to wipe himself. However, she also stated that they can pretty much maintain during the day. The Appellant's mother does not want to put the Appellant back in pull-ons during the day. She explained that the Appellant is not like a regular child with a few accidents at night, rather he is heavily incontinent every night. He wears small adult diapers overnight, but his bed still needs to be changed almost daily. The Appellant's mother does not believe the Appellant should be penalized and not covered now that he no longer needs pull-ons during the day. (Mother Testimony)

The Appellant's mother acknowledged that developmental delay, nocturnal enuresis, and ADHD are the diagnoses she provided during the initial nursing assessment. However, she testified that the Appellant also has PTSD and reactive attachment disorder. She explained that his cognitive impairments are the result of a medical condition, specifically a brain bleed and seizure after birth. (Mother Testimony) The Contract Manager testified that the Appellant's mother described developmental

delay/cognitive impairments that would still be considered behavioral conditions by the State's pediatrician. (Department Manager Testimony)

The Request for Hearing indicates that coverage for heavy pull ups is being sought for the Appellant. (Exhibit 1, page 5) While this ALJ sympathizes with the Appellant's circumstances, she must review the action taken by the Department under the existing Medicaid policy based on the information available at the time of the assessment. The applicable policy in this area is clear, diapers, incontinent pants, liners, belted/unbelted undergarments without sides and pull-on briefs can only be covered when there is the presence of a medical condition causing incontinence. Pull-on briefs for individuals aged 3-20 also requires either (1) that the beneficiary would not benefit from a bowel/bladder program but has the cognitive ability to independently care for his/her toileting needs, or, (2) the beneficiary is actively participating and demonstrating definitive progress in a bowel/bladder program. The information provided at the time of the initial nursing assessment does not support a finding that the Appellant has a medical condition resulting in incontinence nor that the Appellant has the cognitive ability to independently care for his toileting needs or that he has made definitive progress in the toileting program he has been actively participating in. Rather the information indicated that the Appellant was able to be is not participating in a toilet training program, is basically toilet trained during the day but suffers from nocturnal enuresis. This is considered to be a behavioral condition, rather than a medical condition by the state pediatrician. The information provided during the hearing indicated additional developmental delay/cognitive impairments which would not be considered a medical condition resulting in incontinence, and evidenced that the Appellant is not able to independently care for his toileting needs, as he is not able to wipe himself. 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 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 Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]


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Date Mailed 8/1/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.