

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-33577 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 ██████████. ██████████, father, appeared on the Appellant's behalf. ██████████, mother, appeared as a witness for the Appellant. ██████████, ██████████, appeared as an interpreter. ██████████

██████████ 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 continued coverage for 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 ██████ year old Medicaid beneficiary.
2. The Appellant has been diagnosed with unspecified lack of normal physiological development, cleft palate, and developmental delay. (Exhibit 1, page 7; Exhibit 2, pages 2, 5, and 8)
3. The Department has authorized pull-ons for the Appellant since ██████. (Contract Manager Testimony, Exhibit 1, page 7 and Exhibit 2, page 17)
4. Department policy only allows for coverage of pull-on briefs for beneficiaries ages 3-20 when there is the presence of a medical condition causing bowel/bladder incontinence and either 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. Medicaid Provider Manual, Medical Supplier Section, April 1, 2011, page 42. (Exhibit 1, page 11)

5. The incontinent supply company conducted a telephone nursing assessment on ██████████, for the purpose of addressing continued eligibility for pull-on briefs. It was reported that the pull on quantity could be reduced from 4 bags of 20 to 3 bags. It was also reported that the Appellant does not initiate toileting, is never dry when he gets to the toilet but does urinate in the toilet sometimes and has 1/3 of his bowel movements in the toilet. The Appellant was noted to be able to pull elastic waist pants up and down with verbal prompting but needs help with fasteners. (Exhibit 2, page 3)
6. A ██████████, letter from the Appellant's school was received that indicated there are times during restroom breaks at school when the Appellant is not able to unbutton his jeans or pants and he has an accident. While they work on being able to snap, button, and zip, the coordination sometimes provides a struggle for the Appellant. The letter also noted that the Appellant's father reported the Appellant uses pull ups at night time. The teacher also indicated that the Appellant is learning the every day importance of taking care of himself and the use of pull ups will assist him in becoming as independent as possible. (Exhibit 2, page 1)
7. On ██████████, a Department pediatrician reviewed and denied the request for continuing coverage of pull-on briefs. The Department pediatrician determined that the Appellant does not meet the criteria. No definitive progress was documented, an overall decrease in success was reported over the 6 years pull-ons were approved, and pull-ons are a transitional product and not for long term use. (Exhibit 1, pages 7-8)
8. On ██████████, the Department sent an Advance Action Notice denying ongoing pull-on brief coverage effective ██████████. (Exhibit 1, page 6)
9. On ██████████ the Request for Hearing filed on the Appellant's behalf was received. (Exhibit 1, page 5)

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):

Section 2.19 Incontinent Supplies; Standards of Coverage

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.

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.

*MDCH Medicaid Provider Manual,
Medical Supplier Section, April 1, 2011, Pages 41-42.
(Exhibit 1, pages 10-11)*

The Department asserts there is insufficient evidence of definitive progress to continue authorizing pull-on briefs. The Contract Manager explained that the Appellant has been receiving pull-on briefs for 6 years, without a significant decrease in quantity used and the reported success rates have decreased. She noted that under the Department policy, pull-ons are a transitional product and are not considered for long term use. The Contract Manager stated that the denial was in accordance with Medicaid policy because pull-on briefs were originally approved for the Appellant in ██████████ and the information provided did not show definitive progress in the toileting program.
(██████████ Testimony)

The Appellant's father disagrees with the denial and stated it is sad that this will not go through. The Appellant's mother testified that her son needs help, but possibly not 100% help. She stated that in times of emergency he has accidents and it is difficult to communicate with him because he does not speak. Both of the Appellant's parents noted that the school indicated pull-ons would help the Appellant. (Mother and Father 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-on briefs can only be covered for beneficiaries ages 3-20 when there is the presence of a medical condition causing bowel/bladder incontinence and either 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. While the records document some decrease in the quantity of pull-ons utilized since 2005, overall the Appellant's success rates have decreased. (Exhibit 1, pages 7-8 and Exhibit 2, pages 2-17) In ██████████ it was reported that the Appellant has all bowel movements in the toilet, is dry approximately 3 of 10 times when he gets to the toilet to urinate and needs to be reminded to go to the bathroom. (Exhibit 2, page 17) During the ██████████, telephone nursing assessment it was reported that the Appellant does not initiate toileting, is taken to the toilet at set times but is never dry and only has 1 of 2-3 bowel movements per day in the toilet. (Exhibit 2, pages 3-4) The information provided to the Department did not support a finding 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. Accordingly, the Department's denial must be upheld based on the information available at the time of the assessment.

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 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

[REDACTED]
Docket No. 2011-33577 CL
Decision and Order

cc:

[REDACTED]

Date Mailed 8/2/2011

***** 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.