

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

██████████,

Appellant

Docket No. 2011-34334 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 ██████████. ██████████, sister and caregiver, appeared on the Appellant's behalf. ██████████, bother in law, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Michigan Department of Community Health (MDCH) Contract Manager for Diaper and Incontinence Program, 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 a ██████ year-old Medicaid beneficiary.
2. The Appellant's medical history includes Down's Syndrome and stroke (CVA) with right sided paralysis. (Exhibit 1, page 11)
3. On ██████████, the Department's contractor for the Diaper and Incontinent Supplies Program, conducted a telephone nursing to review ongoing eligibility for pull-on briefs. It was reported that the Appellant is encouraged to use his right hand to pull pants up/down and wipe, is usually wet when he gets to the toilet due to functional issues, but finishes on the toilet. (Exhibit 1, page 12)
4. On ██████████, the Appellant's occupational therapist provided a letter

indicating that the Appellant has lost all sensation and control of bowel and urinary control. The letter indicated that the Appellant would benefit from encouragement in independence in daily activities, specifically with toileting; the Appellant should be using disposable pull up undergarments as he may achieve more independence; and he is able to use and is being encouraged to use the right upper extremity for more functional movement and activity. (Exhibit 1, page 10)

5. On ██████████, a state physician reviewed the Appellant's case and determined he did not qualify for ongoing coverage of pull-on briefs because he requires more than minimal assistance with toileting. (Exhibit 1, pages 8-9)
6. On ██████████, 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 7)
7. On ██████████ the Request for Hearing was filed on the Appellant's behalf. The request was re-submitted on ██████████ with the Appellant's signature. (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):

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.

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,
April 1, 2011, Pages 41-42.*

The Department's witness testified that under the Department policy, the Appellant did not meet the criteria for pull-on briefs based on the information reported for the ██████████ pull-on brief review. The policy requires a medical condition resulting in incontinence and the ability to care for his toileting needs independently or with minimal assistance from a caregiver. During the ██████████, telephone assessment it was reported that the Appellant is encouraged to use his right hand to pull pants up/down and wipe, is usually wet when he gets to the toilet due to functional issues, but finishes on the toilet. (Exhibit 1, page 12) A ██████████ letter from the Appellant's occupational therapist indicated that the Appellant has lost all sensation and control of bowel and urinary control. The letter also states that the Appellant would benefit from encouragement in independence in daily activities, specifically with toileting; the Appellant should be using disposable pull up undergarments as he may achieve more independence; and he is able to use and is being encouraged to use the right upper extremity for more functional movement and activity. (Exhibit 1, page 10) These reports do not establish that the Appellant is independent or requires minimal assistance with toileting.

The Appellant's sister disagrees with the denial and testified that they try to encourage the Appellant to use his right side and maintain what independence he has. She stated that with wrap around incontinent products the Appellant is totally dependant with all toileting needs. The Appellant's sister stated that the Appellant can and does use pull-on briefs occasionally independently with success now, but he struggles and it takes a long time. She stated that she does ask him to do it by himself once in a while. The Appellant's sister testified that she is with the Appellant all the time. However, her testimony also indicated that the Appellant does not have the ability to tell others when he needs to go to the bathroom or when he needs to change his incontinent product.

The Appellant's brother in law testified that he knows in the end it is a cost difference, but this does not change the number of pull-on briefs or wrap around products the Appellant uses. He stated that they are just trying to get the Appellant to be a bit more independent.

While this ALJ sympathizes with the Appellant's circumstances, the evidence supports the Department's determination to deny pull-on brief coverage because the Appellant is not independent or requires only minimal assistance with toileting. The information provided for the review indicated that he requires encouragement to utilize his right side to pull his pants up/down and wipe. He does not have the ability to know when to go to the bathroom or when his incontinent products need to be changed. This does not imply that he does not deserve pull-on briefs, or that he would not benefit from this product, only that he did not meet the criteria for ongoing coverage at the time of the [REDACTED] review. Accordingly, the Department's denial must be upheld.

The Appellant's sister's testimony indicated that there may have been some improvement since the [REDACTED] telephone nursing assessment. Specifically, her statement that now the Appellant can and does use pull-on's independently occasionally with success. The Appellant can always request a new telephone nursing assessment and request pull-on briefs if his circumstances have changed and he is independent or only requires minimal assistance with toileting.

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

[REDACTED]
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Decision and Order

cc:

[REDACTED]

Date Mailed 8/26/2011

***** 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.