

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2011-43182 CL
Case No. [REDACTED]

[REDACTED]
Appellant

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200, *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held [REDACTED], the Appellant's mother, represented him at hearing. His stepfather, [REDACTED] was present. [REDACTED], Case Manager from Community Mental Health, was present on behalf of the Appellant.

[REDACTED], Appeals Review Officer, represented the Department of Community Health (Department). [REDACTED], R.N. Medicaid Analyst for the Department's Diaper and Incontinence Supplies Program, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant coverage for pull-on briefs?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. The Appellant is a [REDACTED]-year-old Medicaid beneficiary. (Exhibit 1, page 7)
2. The Appellant suffers from cerebral palsy, mental retardation, and incontinence. (uncontested)
3. The Appellant attends school full time, where he is participating in a toilet-training program. (uncontested)
4. An incontinent supply company contracted by the Department conducted a nursing assessment on [REDACTED], for the purpose of addressing whether the Appellant's pull-on briefs could continue to be covered by Medicaid. (Exhibit 1, page 7)
5. The Appellant has had Medicaid coverage for pull-ons since at least [REDACTED].

(uncontested).

6. In [REDACTED], the Department received a letter from the Appellant's school regarding his toilet-training program. It stated that the Appellant is occasionally dry when he reaches the toilet (3 of 5 times), has 2 bowel movements per week at school and urinates in the toilet 5% of the time. It is uncontested he is maximal assist.
7. A letter submitted by the school in [REDACTED] indicates the Appellant was to the toilet dry 90-95% of the time, did void in the toilet and assists to pull down his pants. It further indicated he does not wipe or pull clothing up and the progress reported was pulling himself up to the handicap bar unassisted.
8. A Department pediatrician reviewed and denied the request for pull-on briefs. The Department determined that there was insufficient evidence of definitive progress in toilet training and noted some decline in bowel movements success after [REDACTED] years of toilet training. (Exhibit 1, page 5)
9. The Department sent an Advance Action Notice of the denial on [REDACTED]. (Exhibit 1, page 6)
10. The Appellant's mother filed a request for hearing with the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED]. (Exhibit 1, page 4)

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 Medicaid Provider Manual addresses the authorization of pull-ons as follows:

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 in, 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 following applies:

- 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.

*Michigan Department of Community Health
Medicaid Provider Manual
Medical Supplier; April 1, 2010;
Page 40*

The Department asserts that there is insufficient evidence of definitive progress to authorize continued Medicaid coverage of pull-on briefs. The Department asserts the nursing evaluation and letter from school actually demonstrate the Appellant's ability to participate in self toileting has declined recently.

According to the Department witness, in ██████████, a letter was provided by the Appellant's school, which failed to document definitive progress. The letter stated that the Appellant participates in a toileting program, but he is only dry 3 out of 5 times when he gets to the toilet. The letter further indicates he requires help getting his clothing down, positioning on the toilet, wiping and getting his clothing back up. It further states he urinates in the toilet 5% of the time at school and has 3 bowel movements in the toilet at school each week.

The Appellant's mother testified that there has been progress and his recent decline could be attributed to regression he experiences when he has surgery. They explained that the Appellant is severely handicapped, but he is starting to communicate when he has to use the bathroom. She further testified that the pull-ups are used at school and they use diapers at home. She stated the school does not have time for diapers.

The Department's denial was proper. There is insufficient evidence of definitive progress toward toilet training in this case. The Appellant is not showing progress in initiating toileting on his own, and he is unable to take care of any of his toileting needs, i.e. take his pants on and off or wipe himself. However, should that change, the Appellant may request a new nursing assessment at that time.

DECISION AND ORDER

[REDACTED]
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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 proper.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 10/7/2011

***** NOTICE *****

The Michigan Administrative Hearing System for the Department of Community Health 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 for the Department of Community Health 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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.