

**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:

██████████,

Appellant

\_\_\_\_\_ /

Docket No. 2011-46393 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 ██████████. ██████████ appeared on behalf of the Appellant. She had no witnesses. ██████████, Appeals Review Officer, represented the Department. Her witness was ██████████, Medicaid Analyst/MDCH.

**ISSUE**

Did the Department properly deny Appellant's request 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 male Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is a youth with autism and cognitive impairment. (Department's Exhibit A, p. 10)
3. The Appellant's representative said that the Appellant has made progress with his bowel training during the summer months – and that such development was not captured by the reviewers at ██████████. See Testimony.
4. The Appellant was notified of the Department action on ██████████, by adequate action notice. His further appeal rights were contained therein. (Department's Exhibit A, pp. 6)
5. The service denial was reviewed by the Department Analyst who opined that it was fairly established that the Appellant did not demonstrate

definitive progress in a bowel-bladder program as required under policy.

6. The Analyst review was supported by Chief Pediatrician, ██████████ who observed on ██████████, that the Appellant had demonstrated no progress for 2 months. Department's Exhibit A, p. 19.
7. On ██████████, the instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health. (Appellant's Exhibit #1)

### **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 for pull-on brief coverage is addressed in the Medicaid Provider Manual:

#### **[ ] 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. (Emphasis supplied)

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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. 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.

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Medicaid Provider Manual (MPM) Medical Supplier,  
July 1, 2011, page 4

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The Department witness testified that the Appellant did not demonstrate definitive progress in a bowel-bladder program as of the date of assessment. This conclusion was supported in the record at Department's Exhibit A, pages 5, 7-19.

The Department witness explained that pull-ons are to be utilized as a short term use product and that on 6-month assessment the Appellant failed to demonstrate definitive progress in his bowel-bladder program.

The letter received from the Appellant's teacher at school in ████████ confirmed that the Appellant has "never defecated in the toilet for us." See Department's Exhibit A, p. 9.

**Docket No. 2011-46393 CL**  
**Decision and Order**

The Appellant's mother testified that there had been positive developments over the summer with regard to the Appellant's toileting skill. See Testimony. The Appellant's representative furthermore questioned the accuracy of the verbal assessment conducted over the phone by [REDACTED] reviewers. She concluded her testimony stating that "he will now sit and go – but he'll have accidents."

The Department witness stated that their decision was based on events occurring on or before [REDACTED]. The Appellant was advised to contact the supplier for an updated assessment if there has been a significant change in condition.

The evidence provided by the Department established that the Appellant has made no documented progress in his home and school-based toilet training program as of the date of review, [REDACTED]. The Appellant's representative has failed to provide any documentation that the Appellant has made definitive improvement [as required under the MPM] concerning his toileting program.

Therefore, the Department's denial of coverage for pull-on briefs was properly reached on [REDACTED], and 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 properly denied coverage of pull-on briefs.

**IT IS THEREFORE ORDERED** that:

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

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Dale Malewska  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 10/25/2011

**\*\*\* 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.