

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2011-4833 CL
Case No. 37445512

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 the Appellant's behalf. ██████████, appeared as a witness for the Appellant. ██████████, represented the Department. ██████████, Michigan Department of Community Health (MDCH) Manager for Diaper and Incontinence Program, 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 ██████████ Medicaid beneficiary.
2. The Appellant has been diagnosed with Trisomy 21, autism, and epilepsy. (Exhibit 1, page 8)
3. The Department has authorized pull-ons for the Appellant since ██████████. (Exhibit 1, page 14)
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, July 1, 2010, page 42.

5. The incontinent supply company, ██████████, conducted a nursing assessment on ██████████, for the purpose of addressing continued eligibility for pull-on briefs. (Exhibit 1, page 9)
6. The Appellant was reported to be nonverbal, physically unable to mobilize independently and having ██████████ cognitive level. Her usage of pull-ons has decreased by about one per day. The Appellant is on a toilet training program, has success rates of 3 on a scale of 1-10 for urine, 75% bowel, and wakes dry 5 of 7 mornings. (Exhibit 1, pages 8-9 and Department Manager Testimony)
7. The Appellant also participates in a toilet training program at school and a letter was obtained from her teacher. The ██████████ letter states that the Appellant is not able to communicate her toileting needs, therefore she is on schedule training. She is working on holding a support to maintain balance to assist with transitions, maintaining balance long enough to have her pants and pulls-ons adjusted, and learning to void in the toilet. (Exhibit 1, page 7)
8. A Department pediatrician reviewed and denied the request for continuing coverage of pull-on briefs. The Department determined that there was insufficient evidence of definitive progress in toilet training. (Exhibit 1, page 6)
9. On ██████████, the Department sent an Advance Action Notice denying ongoing pull-on brief coverage effective ██████████. (Exhibit 1, page 5)
10. On ██████████, the Appellant's mother filed a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health. (Exhibit 1, pages 3-4)

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 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, July 1, 2010, Pages 41-42.*

The Department asserts there is insufficient evidence of definitive progress to continue authorizing pull-on briefs. The nursing assessment notes indicate that the quantity of pull-on briefs requested has only decreased by about one per day. (Exhibit 1, page 9) The Department Manager noted that the Appellant's reported success rate on a scale of 1-10 was a 3 for urine when pull-ons were initially requested and approved in ██████████ and was still a 3 at the time of the ██████████ review. (Exhibit 1, pages 9-10 and 14) The Department Manager also explained that the information provided did not show active participation in the toileting program. This was based on the reports that the Appellant is non-ambulatory and unable to communicate toileting needs so a caregiver places her on the toilet at scheduled times. (Exhibit 1, pages 7-10)

The Appellant's ██████████ disagrees with the denial and testified that the information reported was not accurate. She explained that the Appellant had only been in school for about 3 weeks when the teacher wrote the letter. This was a new teacher for the Appellant, who was not in a good position to know how the Appellant was doing. She also explained that the Appellant is not totally non-verbal, but can say at least 15 words. The Appellant's ██████████ further testified that the Appellant does actively participate in toilet training, such as patting her diaper, helping to pull up her pull-on, and nodding her head yes or no. The Appellant's ██████████ explained that her responses may not have been accurate during the telephone nursing assessment because they sometimes call during busy times, when she is in the middle of something else.

The Appellant's ██████████ discussed a new toileting system they have at home for the Appellant. The Appellant's ██████████ explained that this allows the Appellant to sit independently and have some privacy. He stated that the Appellant consistently pull her pull-ons from her ankles up to her knees to signal when she is done. He also explained that she is very vocal and you will know when she is happy, sad, or if she wants something. The Appellant's ██████████ testified that he does see progress with toilet training every year.

While this ALJ sympathizes with the Appellant's circumstances, she must review the action taken by the Department under the existing Medicaid policy, and based on the information available to the Department at the time of the review. 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. The information provided to the Department did not support a finding that the Appellant has the cognitive ability to independently care for her toileting needs or that she has made definitive progress in the toileting program she has been actively participating in. Accordingly, the Department's denial must be upheld based on the information available at the time of the assessment.

A new request for pull-ons can always be made, which would result in the opportunity to provide more accurate information at the telephone nursing assessment and to provide an updated school letter.

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.

[REDACTED]
Docket No. 2011-4833 CL
Decision and Order

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]

Date Mailed: 1/18/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.