

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

██████████,

Appellant

_____ /

Docket No. 2011-49405 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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. The Appellant, ██████████, was represented by ██████████, with the consent of ██████████ the appointed hearing representative.

██████████, Appeals Review Officer, represented the Department. ██████████, Michigan Department of Community Health (MDCH) 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 on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary.
2. The Appellant is an ██████ year old with physical and cognitive declines attributed to aging and medical declines.
3. The Appellant requires assistance standing, transferring and toileting.
4. A nursing assessment was conducted by telephone as a result of a request for incontinent supplies, including pull-on briefs, for the Appellant. At that time, the Appellant's son reported that she did not toilet independently.
5. The Department denied the request for pull-on briefs and mailed a notice

of denial [REDACTED].

6. Department policy only allows for coverage of pull-on briefs when the beneficiary is either independent or needs minimal assistance with toileting. MDCH Medicaid Provider Manual, Medical Supplier Section, April 1, 2010, page 40. (Exhibit A, page 10)
7. On [REDACTED], the Department received the Appellant's Request for Hearing.

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.

Disposable underpads are covered for beneficiaries of all ages with a medical condition resulting in incontinence.

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, 2010,
Pages 39-40.*


The Department's evidence establishes that during the telephone assessment conducted by the Department's contractor, the Appellant's son reported that he provides a great deal of assistance to his mother for toileting. He lifts her from bed or chair. She is unable to assist in any way, although she still has sensation. She holds her urine as long as possible waiting for assistance. The Appellant's representative stated that the Appellant is transferred to a bed-side commode.

The Department witness stated that policy requires the beneficiary to be either independent or need minimal assistance with toileting needs before pull-ons may be authorized. The Department witness was asked if there is policy to allow for coverage for aged people with the circumstances faced by this Appellant. She stated no, there is not.

While this ALJ understands that the Appellant's circumstances are such she should not be required to wear diapers, this ALJ does not have authority to issue equitable orders, thus the policy must be applied as written. The evidence in this case supports the finding that the Appellant did not meet the Department's policy criteria for Medicaid coverage of pull-ons 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.


Docket No. 2011-49405 CL
Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decisions are **AFFIRMED**.

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

cc:



Date Mailed 10/12/2011

***** 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.