

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-49406 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 ██████████, the Appellant, appeared on her own behalf. ██████████ Home Health Aid, 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 incontinent supplies?

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. On ██████████, the Department's contractor for the Diaper and Incontinent Supplies Program, conducted a telephone nursing assessment pursuant to a request for incontinent supplies. ██████████ notes indicate that the Appellant reported she is incontinent of urine and bowel every other day. The nursing assessment note does not indicate what incontinent supplies the Appellant requested, her medical conditions and any medications she takes relating to incontinence. (Exhibit 1, page 6)
3. On ██████████, the Department sent the Appellant an Adequate Action Notice indicating that all incontinent products shall not be authorized

because the information provided did not support coverage of this service.
(Exhibit 1, page 5)

4. On ██████████, the Appellant's Request for Hearing was filed.
(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 Department policy regarding coverage of incontinence products, including pull-on briefs, is addressed in the MDCH Medicaid Provider Manual (MPM):

2.19 Incontinent Supplies

Definition

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.

Standards of Coverage (Applicable to All Programs)

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.

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.

Standards of Coverage (Not Applicable to CSHCS Only Beneficiaries)

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

The Department's witness referred to the policy outlining the standards of coverage for diapers, incontinence pants, liners, and belted/unbelted undergarments and testified that the Appellant did not meet the criteria because the nursing assessment note indicates she is not incontinent on a daily basis. (Contract Manager Testimony)

The Appellant testified that the nursing assessment note is not accurate because she is incontinent on a daily basis. She explained that she was trying to express the volume of urinary incontinence over a two day period, not the frequency of her incontinence. The Appellant further testified that she was never given a chance to report her medical conditions and medications, which include fibromyalgia, renal failure, diabetes, edema, and taking lasix three times per day. (Appellant Testimony)

The ██████████, telephone nursing assessment note is very brief, and supports the Appellant's testimony that she was not given the opportunity to report her medical conditions and medications. It appears that there was a miscommunication regarding the frequency of incontinence and upon hearing that the Appellant is not incontinent on a daily basis, the nurse determined that Appellant was not eligible and stopped the telephone nursing assessment. (Exhibit 1, page 6) The telephone nursing assessment did not provide sufficient information for the Department to review the Appellant's request for incontinent supplies. There is no indication of what incontinent supplies the Appellant requested, her medical conditions and any medications she takes that relate to incontinence. (Exhibit 1, page 6) It is also noted that the above cited Medicaid Provider Manual policy for incontinent supplies does not include a requirement for daily incontinence for any incontinent supply. Accordingly, the Department's denial can not be upheld because there was insufficient information gathered during the ██████████, telephone nursing assessment to review the Appellant's request for incontinence supplies.

[REDACTED]
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A new nursing assessment is needed to review the Appellant's request for incontinent supplies. The Appellant also testified that she should not have been contacted directly regarding her request for incontinent supplies. The Appellant explained that she had a Durable Power of Attorney/Medical Advocate to handle these issues for her, but that person recently died. The Appellant also indicated that [REDACTED] had filed all the paperwork for the request for incontinent supplies. As discussed during the hearing, the Appellant can give [REDACTED] permission to speak with someone on her behalf, including her caregiver or nurse as either would be familiar with the Appellant's incontinence issues. The Department may also request documentation from the Appellant's physician to support the Appellant's request for incontinence supplies.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the [REDACTED], telephone nursing assessment was insufficient to review the Appellant's request for incontinent supplies.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is ORDERED to conduct a new nursing assessment and reconsider the Appellant's request for incontinent products.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed 9/30/2011

***** 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.