

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[REDACTED]

Appellant

_____ /

Docket No. 2011-6236 CL
Case No. 14584551

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 on [REDACTED]. [REDACTED], the Appellant's [REDACTED], appeared on behalf of the Appellant. [REDACTED], served as the Appellant's [REDACTED]. [REDACTED] represented the Department of Community Health (Department). [REDACTED], 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 [REDACTED] Medicaid beneficiary. (Exhibit 1, page 8)
2. The Appellant has been diagnosed with microcephaly, developmental delay, and angelman syndrome. (Exhibit 1, page 8)
3. The Appellant is enrolled at the [REDACTED], where he is participating in a toilet-training program. (Exhibit 1, page 6)
4. An incontinent supply company contracted by the Department conducted a nursing assessment on [REDACTED] for the purpose of addressing the Appellant's continued need for pull-on briefs. (Exhibit 1, pages 8, 10)

5. A Department pediatrician reviewed the case and requested additional information from the Appellant's teacher. Specifically, the doctor requested that the teacher provide information regarding the Appellant's success rate at school and his ability to toilet himself. (Exhibit 1, page 7)
6. After receiving additional information from the Appellant's teacher, the Department pediatrician denied the request for pull-on briefs. She determined that because the Appellant had been receiving incontinent supplies for two years with no decrease in the amount of product being used, and because his teacher stated that he does not urinate in the toilet at school, there has been no definitive progress in toileting. (Exhibit 1, page 5)
7. The Department sent an Advance Action Notice of the denial on ██████████. (Exhibit 1, page 4)
8. The Appellant's ██████████ filed a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████. (Exhibit 1, page 3)

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 (MPM) states as follows regarding coverage of pull-on briefs:

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. (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; October 1, 2010;
Page 42*

The Department's witness explained that pull-ons were denied in this case because there is insufficient evidence of definitive progress to authorize use of pull-on briefs. According to the Department's witness, during the ██████████ telephone nursing assessment, the Appellant's ██████████ stated that the Appellant needs five to six changes per day, which is maximum number allowed, and he never wakes up dry. (Exhibit 1, page 8) The Department also explained that the letter provided by the Appellant's school failed to document definitive progress. The letter stated that the Appellant participates in a toileting program, but the Appellant does not urinate on the toilet and requires three changes per day. (Exhibit 1, page 6) In addition, the Appellant appears to need the pull-ons for nighttime bedwetting. The Department's witness explained that nighttime bedwetting is a behavioral condition, not a medical condition as required by policy. Finally, the Department's witness pointed out that the Appellant has been receiving pull-ons for three years, and pull-on briefs are considered a short-term, transitional product.

The Appellant's ██████████ testified that the Appellant has made progress because of the use of pull-ons, but he is not fully toilet trained. She stated that the Appellant does not like to use the bathroom at school and in public places. However, he does have bowel movements and he urinates in the toilet at home. She testified that the Appellant only uses two pull-on briefs per day at home: one when he gets home from school and one at night. She explained that the Appellant generally urinates at night. She further stated that the Appellant's teacher had only been working with him for one week when she wrote the letter to the Department. And she is concerned that some of the information she tried to provide the Department at the nursing assessment was lost in translation. Finally, she believes that the Appellant has shown definitive progress in toilet training to warrant continued used of pull-on briefs.

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Based on the information provided to the Department, its denial was proper. The information provided to the Department did not show the requisite definitive progress. However, given the discrepancies between the nursing assessment notes and school letter and the Appellant's [REDACTED] testimony as to the Appellant's actual toileting abilities, a new nursing assessment would be beneficial. The Appellant's [REDACTED] is encouraged to pursue same.

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.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 2/25/2011

***** NOTICE *****

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