

**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. 2011-11533 CL  
Case No. 78835594

**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 ██████████. ██████████ ██████████ of the Appellant, appeared on the Appellant's behalf. ██████████, ██████████, represented the Department. ██████████, Michigan Department of Community Health (MDCH) ██████████ ██████████ 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 ██████████ Medicaid beneficiary.
2. The Appellant previously received incontinent supplies in ██████████. (Exhibit 1, page 4)
3. The service was discontinued because the Appellant would not wear the diapers. ██████████ Testimony)
4. The Appellant has continued to have incontinence of urine overnight. ██████████ Testimony)
5. On ██████████, a telephone nursing assessment was conducted

as a result of a request to re-start incontinent supplies for the Appellant. It was reported that the Appellant is only incontinent overnight. (Exhibit 1, pages 4-7)

6. Department policy only allows for coverage of incontinent supplies when there is a medical condition resulting in incontinence. Documentation must be less than 30 days old and include the diagnosis of condition causing incontinence (primary and secondary diagnosis). (Medicaid Provider Manual, Medical Supplier Section, October 1, 2010, page 42)
7. On ██████████, the Department sent the Appellant an Adequate Action Notice that all incontinent products would not be authorized effective ██████████, because the information provided did not support coverage of this service. (Exhibit 1, page 4)
8. On ██████████, the Department received a Request for Hearing filed on the Appellant's behalf. The hearing request was re-submitted with documentation of Guardianship 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 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.

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.

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

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

The MDCH ██████████ asserted that the Appellant does not meet the standards of coverage for incontinence products therefore he is not eligible for the program. During the ██████████, telephone assessment, it was reported that the Appellant is incontinent overnight. (Exhibit 1, pages 4-7) The MDCH ██████████ explained that nocturnal enuresis, or nighttime bedwetting, is considered a behavioral condition, rather than a medical condition. She explained that the Appellant's request for incontinence products was denied because the standards of coverage require a medical condition resulting in incontinence. (MDCH ██████████ Testimony)

The Appellant's ██████████ disagrees with the Department's denial and testified that the Appellant was in a motor vehicle accident when he was 8 years old and lost a kidney. The Appellant's ██████████ explained that as a result, the Appellant spills protein. The Appellant is also Autistic. During the day the Appellant is taken to the bathroom on an hourly basis. However, he wets the bed a couple of times overnight because the toileting every hour can not be continued overnight. (Exhibit 1, page 2 and ██████████ Testimony)

It appears that the [REDACTED], nursing assessment did not accurately reflect the Appellant's circumstances as it did not include the daytime toileting on an hourly basis or the Appellant's loss of a kidney or any additional medical conditions that result in incontinence. However, this ALJ must review the action taken by the Department based on the information provided at that time. The Appellant can submit a new request for incontinent supplies at any time and provide additional information regarding his medical condition during the new nursing assessment.

The applicable policy in this area is clear, incontinent supplies are only covered when there is a medical condition resulting in incontinence. The information available at the time of the [REDACTED], nursing assessment did not establish a medical condition resulting in incontinence. Accordingly, the Department's denial must be upheld based on the information available at the time of the request.

**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 incontinent supplies was in accordance with Department policy criteria based on the available information.

**IT IS THEREFORE ORDERED** that:

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

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

cc: [REDACTED]

Date Mailed: 4/13/2011

**\*\*\* 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.