

**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- 13487 CL
Case No. 082937080

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 ██████████. ██████████ Appellant's ██████████, appeared on behalf of the Appellant.

██████████, represented the Department. ██████████, 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 upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is ██████████ with cerebral palsy. (Exhibit 1, Page 7).
2. The Appellant is a Medicaid beneficiary.
3. On ██████████, a new nursing assessment was completed as part of an authorization for Appellant's pull-on briefs. (Exhibit 1, Pages 4-6).
4. The nurse who conducted the assessment recorded that Appellant's ██████████ stated Appellant had "no incontinence of bowel or bladder" and that the pull-on diapers were used because the Appellant had a small amount of smearing of

stool. (Exhibit 1, Page 5).

5. On ██████████, the Department sent Appellant an Advance Action Notice that the pull-on briefs, “shall not be authorized,” effective ██████████, because, “the information submitted does not support coverage of this service.” (Exhibit 1, Page 3).
6. On ██████████, the Department received Appellant’s Request for Hearing. (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

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

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. (Italics added).*

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's witness testified that during the ██████████, telephone assessment the nurse assessor reported that Appellant's ██████████ stated the Appellant does not have incontinence of bowel or bladder. The Department's witness testified the nurse assessor recorded that the Appellant's ██████████ said the reason the Appellant used pull-on briefs was due to fecal smearing. The Department's witness testified that Michigan Medicaid policy requires a Medicaid beneficiary ages three through twenty to have incontinence and active participation in a bowel/bladder program in order to cover pull-on briefs. The Department's witness explained that the evidence in Appellant's case showed the reason pull-on briefs were needed was for fecal smearing and not for participation in a bowel program.

The Appellant's ██████████ testified that when the nurse questioned her about whether the Appellant was incontinent, she believed incontinence was only for the bladder and was unaware that a person could be incontinent of bowel, and therefore answered "no."

The Appellant's [REDACTED] stated that the Appellant has cerebral palsy and needs help with personal care. The Appellant's [REDACTED] explained that she would pursue a new nursing assessment including a prescription of medical necessity written by the Appellant's physician.

The Department's witness responded that in order for Medicaid to pay for pull-on briefs, the Department's policy criteria must be met. The Department's witness explained that the policy criteria required the Appellant to have incontinence and be actively participating in a bowel or bladder program in order for pull-on briefs to be covered.

The evidence in this case supports the finding that at the time of the denial determination the Appellant did not meet the Department's policy criteria for Medicaid coverage of pull-on briefs.

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.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 3/11/2011

***** 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.