

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2011-22223 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 ██████████. ██████████ appeared on behalf of the Appellant. She had no witnesses. ██████████ represented the Department. His witness was ██████████.

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 a ██████████ male Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with cerebral palsy. (Department's Exhibit A, p. 4 and Appellant's Exhibit #1)
3. The Appellant representative identified several errors on the JB nursing assessment regarding her son's bowel-bladder incontinence. Most notably that he is incontinent of bowel and bladder. (Department's Exhibit A, pp. 6, 7)
4. On ██████████, JB Medical sent the Appellant an Adequate Action Notice advising him that he was not authorized for Diapers and Incontinence supplies. (Department's Exhibit A, p. 2)
5. The service denial was reviewed by the Department analyst who opined

that on review it was apparent that the Appellant did not demonstrate adequate progress in an established bowel-bladder program as required under policy. See Testimony of ██████████

6. On ██████████, a letter was mailed to the Appellant advising him of the denial. He was further informed of his appeal rights. (Department's Exhibit A, p. 5)
7. On ██████████ the instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health. (Appellant's Exhibit #1)

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 for pull-on brief coverage is addressed in the Medicaid Provider Manual:

[] 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. (Emphasis supplied)

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. 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.

Medicaid Provider Manual (MPM) Medical Supplier,
April 1, 2011,¹ page 42

The Department witness testified that the Appellant did not demonstrate definitive progress in a bowel-bladder program – which was supported in the record at Department's Exhibit A, pages 7 and 8. Both the Department witness and the Appellant's mother acknowledged that no plan is in place at school and that the only training is taking place at home. The Appellant's representative added, "That's why it's taking so long."

¹ This segment of the MPM is identical to that which was in place at the time of appeal.

The Appellant's representative observed the inaccuracies on the nursing assessment and expressed concern that the Appellant might now be ineligible for diapers as well.

The evidence provided by the Department established that the Appellant has made no documented progress in his home and school-based toilet training program. The Appellant's representative has failed to provide any evidence that the Appellant has made definitive improvement [as required under the MPM] concerning the toileting program.

Therefore, the denial of coverage for pull-on briefs must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied coverage of pull-on briefs.

IT IS THEREFORE ORDERED that

The Department's decision is **AFFIRMED**.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 5/24/2011

***** 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.