

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-23944 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 ██████████. ██████████, mother, appeared on the Appellant's behalf. ██████████, represented the Department. ██████████ Michigan Department of Community Health (MDCH) ██████████, appeared as a witness for the Department.

ISSUE

Has the Department properly denied the Appellant continued coverage for 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 ██████████ Medicaid beneficiary.
2. The Appellant has been diagnosed with autism and developmental delay. (Exhibit 1, page 8)
3. The Department has authorized pull-ons for the Appellant since ██████████ (Exhibit 1, page 13)

4. Department policy only allows for coverage of pull-on briefs for beneficiaries ages 3-20 when there is the presence of a medical condition causing bowel/bladder incontinence and either 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. Medicaid Provider Manual, Medical Supplier Section, October 1, 2010, page 42.
5. The incontinent supply company, [REDACTED] conducted a nursing assessment on [REDACTED] for the purpose of addressing continued eligibility for pull-on briefs. It was reported that the Appellant is still not initiating toileting, needs some assistance with his clothing and pull-on, is not having any bowel movements in the toilet and only has one successful urine event per day. (Exhibit 1, page 10)
6. A [REDACTED] letter from the Appellant's school was also received which indicated the Appellant does not initiate toileting, is not very cooperative when it comes to sitting on the toilet, and is not voiding in the toilet. The letter further indicates the Appellant often needs physical prompting with adjusting clothing, does not assist with wiping himself, does not stay dry during the day and needs full support with his bathroom needs. (Exhibit 1, page 9)
7. A Department pediatrician reviewed and denied the request for continuing coverage of pull-on briefs. The Department determined that there was insufficient evidence of definitive progress in toilet training. (Exhibit 1, page 7)
8. On [REDACTED], the Department sent an Advance Action Notice denying ongoing pull-on brief coverage effective [REDACTED] (Exhibit 1, page 6)
9. On [REDACTED], the Request for Hearing filed on the Appellant's behalf was received. (Exhibit 1, page 5)

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):

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.

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

The Department asserts there is insufficient evidence of definitive progress to continue authorizing pull-on briefs. The Department Manager noted that the nursing assessment notes indicate that the Appellant is not initiating toileting. (Exhibit 1, page 10) She also noted that the school letter indicated the Appellant does not void in the toilet, does not assist with wiping, needs full support with toileting and does not stay dry overnight. (Exhibit 1, page 9) The Department Manager explained that the pull-on briefs were originally approved for the Appellant on [REDACTED] and the information provided did not show definitive progress in the toileting program.

The Appellant's mother disagrees with the denial and testified that the Appellant is autistic and in the learning process. She explained that the Appellant had just switched schools at the time of the review, which affected his success with the toilet training program. The Appellant's mother indicated she has since obtained a letter from the prior teacher regarding the Appellant's progress with him. She further explained that the Appellant has a hard time with change and in addition to the new school and teacher at

the time of the review, there was also a new baby at home. She further indicated that Appellant never needed full assistance with toileting. (Mother Testimony)

While this ALJ sympathizes with the Appellant's circumstances, she must review the action taken by the Department under the existing Medicaid policy, and based on the information available to the Department at the time of the review. The applicable policy in this area is clear, pull-on briefs can only be covered for beneficiaries ages 3-20 when there is the presence of a medical condition causing bowel/bladder incontinence and either 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. The information provided to the Department did not support a finding that the Appellant has the cognitive ability to independently care for his toileting needs or that he has made definitive progress in the toileting program he has been actively participating in. Accordingly, the Department's denial must be upheld based on the information available at the time of the assessment.

A new request for pull-ons can be made at any time, which would result in the opportunity to provide updated information at the telephone nursing assessment and to provide an updated school letter.

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.

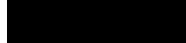
IT IS THEREFORE ORDERED that:

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

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

cc: 

Date Mailed 6/2/2011


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Decision and Order

***** 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.