

**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. 2011-27422 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 ██████-year old Medicaid beneficiary.
2. The Appellant has been diagnosed with severe developmental delay and uncontrolled epilepsy. (Exhibit 1, page 14)
3. The Department has authorized pull-ons for the Appellant since ██████████ (Exhibit 1, pages 44-45)
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, January 1, 2011, page 42.

5. The incontinent supply company conducted a nursing assessment on ██████████, for the purpose of addressing continued eligibility for pull-on briefs. It was reported that there was no change in quantity needs. It was also reported that the Appellant initiates toileting less than half the time. (Exhibit 1, page 15)
6. An ██████████, letter from the Appellant's school was received which indicated the Appellant is unable to initiate using the restroom on her own, and verbal reminders are provided daily. The Appellant needed assistance using the restroom: 72% of the time with adjusting her clothes once she is finished with the routine, 22% of the time she needed to be handed her diaper or wipes, and 5% of the time she needed verbal prompts to get anything accomplished in the bathroom. (Exhibit 1, page 13)
7. A ██████████, letter from the Appellant's school was also received which indicated the Appellant is still unable to initiate when using the restroom on her own so verbal reminders are given daily. The Appellant needed assistance using the restroom: 80% of the time with adjusting her clothes, 10% of the time she needed to be handed her diaper or wipes, and 5% of the time she was unable to follow any steps in the routine. It was reported that the Appellant never makes it to the toilet dry and does not urinate or have bowel movements in the toilet. The Appellant made some progress with getting her own diapers and wipes out of the drawer, but regressed with needing assistance adjusting her clothes once she is finished. (Exhibit 1, page 12)
8. On ██████████, a Department pediatrician reviewed and denied the request for continuing coverage of pull-on briefs. The Department determined that the Appellant does not meet the state criteria, no definitive progress was documented, pull-ons are a transitional product and not for long term use. (Exhibit 1, page 11)
9. On ██████████, the Department sent an Advance Action Notice denying ongoing pull-on brief coverage effective ██████████. (Exhibit 1, page 10)
10. On ██████████, a second school letter was received, which indicated that there are very few skills the Appellant is able to do independently, but going to the bathroom and practicing personal hygiene is one of them even if it is only 72% of the time. The letter indicated that if the Appellant is given adult diapers instead of the pull-on she is used to, major regression will take place in regards to personal care and that it may

take several months or even several years before the Appellant is completely independent in the bathroom. (Exhibit 1, page 9)

11. On ██████████, a Department pediatrician reviewed the request again, and determined that the Medicaid criteria for pull-ons was not met. (Exhibit 1, page 8)
12. On ██████████, the Department sent an Advance Action Notice denying ongoing pull-on brief coverage effective ██████████. (Exhibit 1, page 7)
13. On ██████████, the Request for Hearing filed on the Appellant's behalf was received. (Exhibit 1, page 6)

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, January 1, 2011, Pages 41-42.*

The Department asserts there is insufficient evidence of definitive progress to continue authorizing pull-on briefs. The Department Manager explained that the nursing assessment notes indicate that the Appellant initiates toileting less than half the time and there was no change in quantity needs. (Exhibit 1, page 15) The ██████████, school letter indicated the Appellant is unable to initiate using the bathroom on her own, never makes it to the toilet dry and does not urinate or have bowel movements in the toilet. The Appellant made some progress with getting her own diapers and wipes out of the drawer, but regressed with needing assistance adjusting her clothes once she is finished. (Exhibit 1, page 12) The Department Manager explained that the ██████████, school letter did not provide new information. The Department Manager stated that the denial was in accordance with Medicaid policy because pull-on briefs were originally approved for the Appellant in ██████████ and the information provided did not show definitive progress in the toileting program.

The Appellant's mother disagrees with the denial and testified the Appellant just began attending High School and thus has had a hard time adjusting and getting comfortable. She stated that in the past two months, there has been a little bit of progress getting comfortable and being a bit more independent. The Appellant's mother believes that the Appellant will regress more if she has to change to diapers. She stated that even the little bit the Appellant can do now is huge for her.

While this ALJ sympathizes with the Appellant's circumstances, she must review the action taken by the Department under the existing Medicaid policy. 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 her toileting needs or that she has made definitive progress in the toileting program she has been actively participating in. Accordingly, the Department's denial must be upheld based on the information available at the time of the assessment.

[REDACTED]
Docket No. 2011-27422 CL
Decision and Order

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:

[REDACTED]

Date Mailed 6/28/2011

***** 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.