

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-40718 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 ██████████, Case Worker, ██████████, appeared on the Appellant's behalf. ██████████, the Appellant, appeared and testified. ██████████, Appeals Review Officer, represented the Department. ██████████ Michigan Department of Community Health (MDCH) Contract Manager for Diaper and Incontinence Program, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of incontinent products?

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's medical history includes seizure disorder and incontinence. (Exhibit 1, page 6)
3. On ██████████, the Department's contractor for the Diaper and Incontinent Supplies Program, conducted a telephone nursing assessment pursuant to a request for incontinent products. ██████████ notes indicate that the Appellant's representative reported that the Appellant is only incontinent occasionally, not everyday, and uses the products for her menstrual cycle. (Exhibit 1, page 7)
4. On ██████████, the Department sent the Appellant an Adequate Action

Notice that all incontinence products shall not be authorized because the information provided did not support coverage of this service. (Exhibit 1, page 5)

5. On [REDACTED], the Request for Hearing was filed on the Appellant's behalf. (Exhibit 1, page 4)

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.

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

The Department's witness testified that under the Department policy, the Appellant did not meet the criteria for pull-on briefs based on the information reported during the ██████████, telephone nursing assessment. She explained that the Department's policy requires a medical condition resulting in incontinence and this was not established in the information ██████████ provided to the Department from the ██████████, telephone nursing assessment. Rather, the telephone nursing assessment note indicates it was reported that the Appellant is only incontinent occasionally, not everyday, and mainly uses the incontinent products for her menstrual cycle. The note further implies that the Appellant has nocturnal enuresis. (Exhibit 12, page 7) The Department's witness stated that the Department considers nocturnal enuresis to be a behavioral condition rather than a medical condition. She stated the requested incontinence products can not be covered for nocturnal enuresis and menstrual cycles. (Contract Manager Testimony)

The Appellant's Case Worker disagrees with the denial and testified that she never reported that the Appellant has nocturnal enuresis, or bedwetting, to ██████████. She explained that the Appellant is not incontinent overnight. Rather, the Appellant has an overactive bladder, which she takes medication for and also has bowel incontinence sometimes. The Appellant is occasionally incontinent overnight and during the day. The Appellant's Case Worker stated that the Appellant does not know when she will be incontinent so she wears incontinent products when she is out and about. The Appellant's Case Worker also explained that the incontinent products would also catch the Appellant's menstrual cycle. Lastly, the Appellant's Case Worker testified that they have had trouble getting a letter from the Appellant's doctor to support her request for incontinence products. (Case Worker Testimony)

The Appellant testified that she needs the undergarments and her money pays for it. (Appellant Testimony) The Appellant's Request for Hearing states that incontinence issues randomly affect her and she has to use adult Depends for heavy flow periods. (Exhibit 1, page 4)

While this ALJ sympathizes with the Appellant's circumstances, the evidence supports the Department's determination to deny coverage of incontinence products based on the

information forwarded from [REDACTED]. While the telephone nursing assessment note does not clearly show that the Appellant's Case Worker reported nocturnal enuresis, it also does not show that a medical condition resulting in incontinence was reported, such as overactive bladder. (Exhibit 1, page 7) A medical condition resulting in incontinence is required for coverage of diapers, incontinent pants, liners, belted/unbelted undergarments without sides and pull-on briefs. These products are not covered for menstrual cycle use alone, though it is understandable that when these products are worn for incontinence they would also catch the menstrual flow. Further, the testimony of the Appellant's Case Worker indicates that no current documentation has been obtained from the Appellant's doctor. Accordingly, the Department's denial must be upheld because the information available at the time the [REDACTED] request was reviewed did not document a medical condition resulting in incontinence.

If she has not already done so, the Appellant can always request a new telephone nursing assessment for incontinent products to provide more complete and accurate information regarding any medical conditions that result in incontinence and submit documentation from her doctor to support 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 products was in accordance with Department policy based on the information available at that time.

IT IS THEREFORE ORDERED that:


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

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

cc:

[REDACTED]

Date Mailed 9/20/2011


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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.