

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Docket No. 2011-4883 CL
Case No. 17274534

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200, *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, the Appellant's ██████████, appeared on behalf of the Appellant. ██████████, represented the Department of Community Health (Department). ██████████, ██████████ for the Department's Diaper and Incontinence Supplies Program, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant coverage for pull-on briefs?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. The Appellant is ██████████ Medicaid beneficiary. (Exhibit 1, page 7)
2. The Appellant suffers from idiopathic intractable epilepsy. (Exhibit 1, page 4)
3. The Appellant is homeschooled and participates in a toileting program. (Exhibit 1, page 9)
4. An incontinent supply company contracted by the Department conducted an annual nursing assessment on ██████████, for the purpose of addressing the Appellant's continued need for pull-on briefs. (Exhibit 1, pages 7-10)

5. A Department pediatrician reviewed and denied the request for pull-on briefs. The Department determined that there was insufficient evidence of definitive progress in toilet training. (Exhibit 1, page 6)
6. The Department sent an Advance Action Notice of the denial on ██████████. (Exhibit 1, page 5)
7. The Appellant's ██████████ filed a request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████. (Exhibit 1, pages 3-4)

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.

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 in, 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 following applies:

- The beneficiary is able to care for his/her toileting needs independently or with minimal assistance from a caregiver. (Emphasis added)

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.

*Michigan Department of Community Health
Medicaid Provider Manual
Medical Supplier; October 1, 2010;
Pages 41-42*

The Department asserts that there is insufficient evidence of definitive progress to authorize use of pull-on briefs. According to the Department witness, during the telephone nursing assessment, the Appellant's ██████████ stated that the Appellant's condition had declined and that she was no longer putting underwear on the Appellant. The Department also explained that the letter provided by the Appellant's physician failed to document definitive progress. The letter also noted that the Appellant is particularly prone to nocturnal seizures, and the witness explained that the Department does not consider nighttime bedwetting to be a medical condition for which pull-ons can be authorized. (Exhibit 1, page 8)

The Appellant's ██████████ testified the Appellant had been making definitive progress with her toilet training. However, there was a set back with the Appellant's medical condition approximately ██████ years ago, when she tried a new medication. The new medication caused increased seizures—sometimes more than 20 per day—which set the Appellant back in her toilet training efforts. The Appellant's ██████████ conceded that the Appellant has not made any definitive progress in toilet training since that time, but explained that it took the Appellant months and months before her set back to get to where she was. She further explained that the Appellant has precocious puberty, which makes it difficult to use diapers on the Appellant. The pull-ons are more convenient.

The Department's denial was proper. Based on the information provided to the Department, there was no evidence of definitive progress to support the continuation of pull-ons. However, should the Appellant's condition improve, she may request a new nursing assessment at that time.

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 proper.

[REDACTED]
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IT IS THEREFORE ORDERED that:

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

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 1/25/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.