

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

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IN THE MATTER OF:

Docket No. 2011-49404 CL

Case No. [REDACTED]

[REDACTED],
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 [REDACTED], the Appellant's mother, represented him at hearing.

[REDACTED], Appeals Review Officer, represented the Department of Community Health (Department). [REDACTED], Medicaid Analyst 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 a [REDACTED]-year-old Medicaid beneficiary.
2. The Appellant suffers from Angelman's syndrome and is incontinent at least during the day time.
3. The Appellant attends school full time, where he is participating in a toilet-training program. (uncontested)
4. An incontinent supply company contracted by the Department conducted a nursing assessment on [REDACTED], for the purpose of addressing whether the Appellant's pull-on briefs could be covered by Medicaid.
5. The Appellant has had Medicaid coverage for pull-ons in the past. This coverage had previously been discontinued in [REDACTED] following a nursing

assessment at which his mother indicated he was incontinent during the daytime only.

6. In ██████████, the Appellant sought to restart the coverage for pull-ons, reporting only a need for a pull-on for night time use and longer car rides.
7. The Department reviewed and denied the request for pull-on briefs. The Department determined that there was insufficient evidence of definitive progress in toilet training and noted day time incontinence only is not a qualifying medical condition for incontinence supplies.
8. The Appellant's mother filed a request for hearing with the Michigan Administrative Hearing System for the Department of Community Health on ██████████.

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 Medicaid Provider Manual addresses the authorization of pull-ons as follows:

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; April 1, 2010;
Page 40*

The Department asserts that there is insufficient evidence of definitive progress to authorize continued Medicaid coverage of pull-on briefs. Furthermore, nighttime incontinence only is not a medical condition for which incontinence supplies are covered by Medicaid. The Department witness asserts that their policy is to consider nighttime incontinence a behavioral condition rather than a medical condition. No documentation of a behavioral medicine or professional medical opinion specific to this Appellant was cited in support of this position. It was asserted to be an undisputable fact rather than a determination about this particular Medicaid beneficiary. The Department indicated no Medicaid coverage for incontinence supplies can be authorized without daily incontinence and that it could not be nighttime incontinence only because that is not medically based.

According to the Appellant's mother, her son is incontinent. He wears underpants during the day to encourage toilet training. He is incontinent at night but due to his Angelman's syndrome, he must be locked into his room, therefore cannot come and tell her when he has to toilet. Additionally, she said she had asked for any incontinent supplies, not only pull-ons. This ALJ asked her to clarify what she was seeking. She testified both that she wanted pull-ons and that she wanted any incontinent supplies that could be covered. She also asserted both that her son is incontinent and that he is making definitive progress in his toilet training program. She further stated her son has the cognitive skill set of a ██████████ old child. She reiterated that he only wears a pull-on at night and for long car rides. She testified if he were not placed on the toilet per his schedule daily, he would have accidents nearly every day.

This ALJ has considered the evidence of record from both parties. This ALJ cannot rely upon the testimony from the Appellant's mother to make the material findings of fact necessary to order a reversal. The most consistent, therefore credible, evidence of record supports the Department's determination that the standards of coverage for pull-ons has not been met. There is no evidence sufficiently reliable to find the Appellant has made definitive progress in toilet training such that coverage could be continued.

The assertion from the Appellant that any/all incontinence supplies are what were requested is credibly refuted with evidence from the Department's witness and documentation accepted into the evidentiary record. The report to the medical supplier at 2 nursing assessments supports the Department's assertion that the supplies asked for were pull-ons.

The denial of pull-ons for failure to meet the standards of coverage for lack of definitive progress is appropriate in this case. No findings will be made about the Department's position regarding nighttime only incontinence as it is not material to the disposition in this case.

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.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 11/3/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.