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5. On ██████████ spoke with the Appellant's son, who reported the Appellant does not toilet as she is a fall risk for toileting. The Appellant resides in an independent living facility, but is unable to stand to transfer, bear weight on her feet, get out of bed without assistance, and has a caregiver that comes and changes her throughout the day. (Exhibit 1, page 7)
6. On ██████████ the Appellant's Request for Hearing was received. (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,
July 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 the beneficiary to be able to care for his/her toileting needs independently or with minimal assistance from a caregiver. The information provided by the Appellant on ██████████, and from her son on ██████████, indicated that the Appellant does not toilet independently or with minimal assistance from a caregiver. Rather, on ██████████, the Appellant reported that she urinates in the diaper and does not use the bedside commode or toilet. (Exhibit 1, page 7) Further, on ██████████ spoke with the Appellant's son, who reported the Appellant does not toilet as she is a fall risk for toileting. The Appellant resides in an independent living facility, but is unable to stand to transfer, bear weight on her feet, get out of bed without assistance, and has a caregiver that comes and changes her throughout the day. (Exhibit 1, page 7)

The Appellant's son disagrees with the denial. It was asserted in the hearing request and the Appellant's son's testimony that they misunderstood questions during the telephone nursing assessment and the Appellant is capable of using the commode, has a raised toilet seat, and does transfer on her own. The Appellant's son stated that it is only sometimes that the Appellant can not use the toilet. The Appellant's son explained that the Appellant can not stand for long periods and open her legs to utilize a traditional diaper. Pull-ons are easier for the Appellant to use, and this is a safety issue because she is a fall risk.

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 provided to ██████████. The information showed that the Appellant is not independent or required only minimal assistance with toileting. Accordingly, the


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Appellant did not meet the criteria for pull-on briefs and the Department's denial must be upheld.

The Appellant can request a new telephone nursing assessment for incontinent products to provide more complete and accurate information regarding her abilities and needs for assistance with toileting and submit documentation from her doctor to support a new request for pull on briefs.

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 based on the information available provided for the request.

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:



Date Mailed 12/27/2011

***** 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.