

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

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IN THE MATTER OF:

██████████

Appellant

**Docket No. 2011-8955 CL
Case No. 67505287**

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████, the Appellant's ██████████, appeared as the Appellant's representative. ██████████, represented the Department. ██████████ Michigan Department of Community Health (MDCH) ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of incontinent wipes?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary.
2. The Appellant is ██████████ wheelchair bound male who is incontinent.
3. On ██████████, a nursing assessment was conducted by Department of Community Health incontinence supply contractor ██████████ for the purpose of determining whether the Appellant's request for incontinence supplies could be authorized as Medicaid covered medical supplies.

4. Following assessment the contractor sent an Adequate Action Notice to the Appellant informing him the incontinent wipes would not be authorized as Medicaid covered medical supplies. The Notice stated the following reason: "The information provided did not support coverage of this service."
5. The Department approved the request for diapers and gloves for the Appellant, but not the incontinent wipes.
6. Department policy only allows for coverage of incontinent wipes when necessary to maintain cleanliness outside of the home. MDCH Medicaid Provider Manual, Medical Supplier Section, [REDACTED], page 42.
7. On [REDACTED], the Department received the Appellant's Request for Hearing.

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 wipes, is addressed in the MDCH Medicaid Provider Manual:

2.19 INCONTINENT SUPPLIES

Definition

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.

Standards of Coverage (Applicable to All Programs)

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. (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.

Incontinent Wipes are covered when necessary to maintain cleanliness outside of the home.

Disposable underpads are covered for beneficiaries of all ages with a medical condition resulting in incontinence.

*MDCH Medicaid Provider Manual,
Medical Supplier Section,
July 1, 2010, Pages 41-42*

The Department's witness testified that during the ██████████, telephone assessment, it was reported that the Appellant is not changed when he is out of the house, therefore incontinent wipes were not authorized. The witness stated the wipes are only a covered service for use outside the home.

The Appellant's ██████████ testified that she misunderstood the question during the nursing assessment. She stated she was asked if the Appellant leaves the home for doctor appointments or not. She responded he did leave the home for doctor appointments. She was asked if he is changed outside the home. She said no, she did not change him, believing the question still pertained to when he was at the doctor's office. She further testified the Appellant goes on many outings and he is changed during those outings. She listed bowling, movies, visiting friends and relatives, going to respite and camping as regular outings the Appellant participates in. The Appellant's ██████████ was asked how she accomplishes changing her ██████████ when in public. She responded she takes him to the van, loads him in and uses a special pad and supplies to accomplish the task in the privacy of the van.

This ALJ read the nursing assessment attached to the evidence provided by the Department because the Department's witness did not conduct the assessment or interview the Appellant or his ██████████. The nursing assessment reads, in pertinent part, "Client goes out of home on a regular basis and is not changed when out, not eligible for wipes, currently not attending school or daycare but may go in near future."

After reading the notes taken as a result of the nursing assessment this ALJ is unable to ascertain what question was asked by the contractor that yielded the answer "no" which was then summarized to mean the Appellant is never changed when on an outing. The person who conducted the assessment was not present at hearing to testify as to what question or questions were asked and what the responses were. As a result, this ALJ is left with the uncontested testimony from the Appellant's representative. She is the only person at the hearing who participated in the assessment at issue. Because the question actually asked during the assessment is not written or otherwise provided by the Department, the Appellant's testimony regarding what she was asked and how she responded stands uncontested. She has provided un-refuted evidence of her confusion, thus reason for the inaccurate answer. Given the uncontested evidence not only of the confusion but of regular community outings such as movies, bowling, camping, respite and visiting friends and family, it is not reasonable to actually believe the ██████████ Appellant is never changed when in the community. He is active, thus it is more

consistent that he would require changing at least sometimes when on a community outing.

Reading the Notice sent the Appellant, this ALJ finds the Appellant would not have been able to ascertain the actual reason for the denial only from the Notice. When reading the request for hearing, the Appellant sets forth an account of her confusion and also makes evident she spoke with the person who completed the assessment in more detail than is included in the nursing assessment summary included in evidence. The request for hearing states the Appellant's representative was informed at the time of assessment she would not be approved for wipes because she answered "no" to the question of whether he was changed during outings. Perhaps if the person who conducted the assessment on behalf of the Department were present at hearing to provide her own account of what was asked and how it was answered, the evidence would refute the Appellant's account. However, without any evidence to contradict the only person who participated in the assessment, there is no reliable basis upon which this ALJ could find the Appellant did in fact understand the question asked of her and answered accurately. This ALJ finds the Appellant has provided credible testimony establishing the assessment did not yield accurate, relevant information about whether the Appellant is changed during community outings, thus a new assessment must be completed.

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 wipes is not reliable due to miscommunication between the parties participating in the assessment, thus is not in accordance with Department policy criteria.


IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is hereby ordered to complete a new assessment.

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

cc: [REDACTED]

Date Mailed: 2/4/2011


Docket No. 2011-8955 CL
Decision and Order

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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.