

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2012-56280 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 ██████████. ██████████, ██████████, appeared on the Appellant's behalf. ██████████, 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

Has the Department properly denied the Appellant continued coverage for pull-on briefs?

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 ██████████ Medicaid beneficiary.
2. The Department has authorized pull-on briefs, 4-5 per day, for the Appellant from about ██████████ through ██████████ through ██████████ through ██████████, and ██████████ through ██████████. (Exhibit 1, pages 6-16).
3. Department policy only allows for coverage of pull-on briefs for beneficiaries ages 3-20 when there is the presence of a medical condition causing bowel/bladder incontinence and either 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. Medicaid Provider Manual, Medical Supplier

Section ██████████, pages 41- 42.

4. On ██████████, ██████████, the Department's contractor for the Diaper and Incontinent Supplies Program, conducted a telephone nursing assessment with the Appellant's ██████████ for the purpose of addressing continued eligibility for pull-on briefs. The Appellant's medical history includes microencephaly, developmental delay and a recent diagnose of seizure disorder. Regarding toilet training, it was stated that the Appellant has regressed but is on medication that seems to be working. The Appellant needs reminders and assistance with hygiene. The Appellant had a 50% success rate with urination and bowel movements and wears 4 pull-on briefs per day. A teacher letter was requested. (Exhibit 1, pages 9-10).
5. A ██████████, letter was received from the Appellant's ██████████ that indicated that the Appellant has a vision impairment and a cognitive impairment. The Appellant participates in a toileting program designed for him. The Appellant is on a time schedule and needs one-on-one assistance or verbal prompts for initiation, wiping, and some help with buttoning or zipping his pants. This program began when he started attending that ██████████ in ██████████. (Exhibit 1, page 8).
6. On or about ██████████, a Department ██████████ reviewed and denied the request for continuing coverage of pull-on briefs. The Department pediatrician noted that the Appellant has been receiving pull-on briefs since ██████████, policy requires definitive progress, and pull-on briefs are considered a transitional product and are not for long term use. It was also noted that the Appellant continues to use the same amount of product since the ██████████ nursing assessment. (Exhibit 1, page 7).
7. On ██████████, the Department sent an Advance Action Notice denying coverage for pull-on briefs effective ██████████ ██████████ ██████████. (Exhibit 1, page 6).
8. On ██████████, the Request for Hearing filed on the Appellant's behalf was received. (Exhibit 1, pages 4-5).

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 [CHANGES MADE

[REDACTED]

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 (Not Applicable to CSHCS Only Beneficiaries) (revised [REDACTED])

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 ages 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.

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

Standards of Coverage (Applicable to All Programs) (revised ██████████)

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,
██████████, Pages 41-42.*

The Department asserts there is insufficient evidence of definitive progress to continue authorizing pull-on briefs. During the ██████████ telephone nursing assessment, the Appellant's ██████████ reported the Appellant had regressed, though it was also reported he is taking medication that seems to be working. It was also reported that the Appellant needs reminders and assistance with hygiene and wears 4 pull-on briefs per day. (Exhibit 1, page 10). A ██████████ letter was submitted which indicates the Appellant is on a time schedule and needs one-on-one assistance or verbal prompts for initiation, wiping and some help with zipping or buttoning his pants. (Exhibit 1, page 8). The Contract Manager noted that the Appellant has been continuing to use 4-5 pull-on briefs for about three and a half years. (Contract Manager Testimony and Exhibit 1, pages 9-16). In her review, the Department's ██████████ also noted that the Appellant has been receiving pull-on briefs since ██████████ policy requires definitive progress, and pull-on briefs are considered a transitional product and are not for long term use. (Exhibit 1, page 7).

The Appellant's ██████████ disagrees with the denial and testified they were not aware they had to let them know if the Appellant uses less. She stated that he Appellant does not use pull-on briefs during the day and he is toilet trained during the day. The Appellant is on a schedule and has some accidents, but not daily. The Appellant wears pull-on briefs if he has loose stools. ██████████).

The applicable Medicaid policy in this area is clear, pull-on briefs can only be covered for beneficiaries ages 3-20 when there is the presence of a medical condition causing bowel/bladder incontinence and either 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. The Appellant had been receiving 4-5 pull-on briefs per day, with some short breaks, since the ██████████ nursing assessment. (Exhibit 1, pages 9-16). The continued use of 4 pull-on briefs per day was reported by the Appellant's ██████████ during the ██████████ telephone nursing assessment. (Exhibit 1, page 10). A continuing need for reminders and assistance with hygiene was also reported by the Appellant's father and in the school letter, which also noted a need for some help with zipping or buttoning his pants. (Exhibit 1, pages 8 and 10). The information provided to the Department did not support a finding that the Appellant has the cognitive ability to independently care for his toileting needs or that he has made definitive progress in the toileting program he has been actively participating in. Further,

[REDACTED]
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the Appellant's [REDACTED] testified that the Appellant is now toilet trained during the day and does not wear pull-on briefs during the day. ([REDACTED]). Accordingly, there would no longer be a need to use pull-on briefs as a transitional product for toilet training. The Department's denial must be upheld based on the available information.

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 criteria.

IT IS THEREFORE ORDERED that:

The Department's decisions are **AFFIRMED**.

/s/

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: November 1, 2012

***** 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.