

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

Docket No. 2012-44444 CL

██████████

██████████

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 ██████████ ██████████. The Appellant appeared without representation. He had no witnesses. ██████████ Appeals Review Officer, represented the Department. His witness was ██████████, Medicaid Analyst.

ISSUE

Did the Department properly deny Appellant's request for incontinent wipes?

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 ██████ year-old, disabled, Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with bowel incontinence and cirrhosis. (Department's Exhibit A, page 5)
3. On ██████████ a request for incontinent wipes was received by the Department's contractor ██████ Medical as submitted by the Appellant's physician. (Department's Exhibit A, page 3)
4. On ██████████, the Appellant was advised via adequate action notice on the denial of the requested incontinent wipes. He was further informed of his right to appeal. (Department's Exhibit A, page 5)

5. On ██████████ the instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health. (Appellant's Exhibit #1)

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 for incontinent wipes coverage is addressed in the Medicaid Provider Manual:

[] 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. 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.

(Emphasis supplied) Medicaid Provider Manual (MPM) Medical Supplier, January 1, 2012, pp. 41, 42

The Department witness testified that the Appellant was not eligible for the incontinent product [wipes] because he was reported as not going out into the community. The Department's evidence, the telephone assessment conducted by ██████████ Medical Supply, informed the reader that his adequate action letter cited reason #8 for the denial.

It is unknown what "reason #8" means.

The Appellant, who doesn't have a phone, appeared for hearing at the ██████████ County DHS office. He was observed by his ASW ██████████. He testified that obviously he goes out into the community stating, "...I'm here aren't I? I also go out to

many doctor and dental appointments. I need the wipes "...to wipe my butt when I'm out." (See Testimony of ██████████)

On review, the check-box assessment conducted by an unknown RN - who did not appear for hearing - was strongly contested by the Appellant for accuracy. The Appellant said he has several bowel movements per day – in the “early morning” and “around lunch time.” He said he tries to schedule his many doctor appointments between these times. However, accidents happen.

He said because of the many medications he takes and the long distances he must travel for medical treatment that wipes are a necessity. Since the Department witness had no first hand knowledge about the questioning conducted by the reviewer for [REDACTED] Supplies – I find the Appellant’s testimony both credible and uncontested.

Absent an ability to probe the telephone reviewer at hearing the Appellant has put forth a convincing presentation that the assessment either didn’t happen or was recorded with error – either way a new assessment must be conducted.

The Appellant has preponderated his burden of proof that he needs the incontinent wipes outside of the home to maintain cleanliness.

Therefore, the denial of coverage for incontinent wipes must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied coverage of incontinent wipes.

IT IS THEREFORE ORDERED that:

The Department’s decision is REVERSED. The Department shall provide the Appellant with Incontinent Wipes.

IT IS FURTHER ORDERED that:

The Department shall conduct a new assessment within 90-days receipt of this Decision and Order.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 5-21-12

***** 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.