

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

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

IN THE MATTER OF:

██████████

Docket No.

██████████

2012-52114 CL

██████████

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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ appeared on behalf of the Appellant. She had no witnesses. ██████████ Appeals Review Officer, represented the Department. His witness was ██████████, Medicaid Analyst/MDCH.

ISSUE

Did the Department properly deny Appellant's request 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 ██████-year-old male Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is a youth with Cri du chat's syndrome and developmental delay. (Department's Exhibit A, p. 11)
3. The Appellant's representative said that denial of pull-ons would lead to greater frustration in the Appellant for impeding his ability to raise and lower his pants without assistance. (See Testimony)
4. The Appellant was notified of the Department action on ██████████, by advance action notice. His further appeal rights were contained therein. (Department's Exhibit A, p. 7)

5. The service denial was reviewed by the Department Analyst who opined that it was fairly established that the Appellant did not demonstrate definitive progress in a bowel-bladder program as required under policy.
6. The Analyst review was supported by Chief Pediatrician, Dr. ██████████ M.D. who observed that the Appellant had demonstrated no definitive progress. (Department's Exhibit A, p. 8)
7. 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 did not demonstrate definitive progress in a bowel-bladder program as of the date of assessment. This conclusion was supported in the record and with a letter from the beneficiary's teacher.

The Department witness explained that pull-ons are to be utilized as a short term use product and that on 6-month assessment the Appellant failed to demonstrate definitive progress in his bowel-bladder program – because he was using the same amount of product.

The request for pull-ons was reviewed by MDCH physician Dr. █████ █████ MD, who concluded based on receipt of additional requested information that the Appellant had not demonstrated definitive progress within the meaning of the standard found in the MPM. Indeed, previous reviews showed that the Appellant had made no progress from his last review. (See Department’s Exhibit A, at page 12)

The Appellant’s mother testified that her son was still in school and that denial of pull-ons would cause greater frustration for the Appellant in his inability to push-down and pull-up his pants in the advancement of his toileting skill. (See Testimony)

The evidence provided by the Department established that the Appellant has made no documented progress in his home and school-based toilet training program as of the date of review, ████████████████████. The Appellant has failed to preponderate his burden of proof or provide adequate evidence documenting definitive improvement [as required under the MPM] concerning advancement of his toileting program.

Therefore, the Department’s denial of coverage for pull-on briefs was properly reached on ████████████████████, and must be upheld.

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 pull-on briefs.

IT IS THEREFORE ORDERED that:

The Department’s decision is **AFFIRMED**.

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

cc: ████████████████████

Date Mailed: 6-20-12

Docket No. 2012-52114 CL
Decision and Order

***** 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.