

**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) 373-4147

IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2012-69909 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 ██████████. ██████████, mother, appeared on the Appellant's behalf. ██████████, Manager Appeals Section, 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 ██████ year old Medicaid beneficiary.
2. The Department has authorized pull-on briefs for the Appellant since ██████. (Exhibit 1, page 15)
3. On ██████, the Department authorized pull-on briefs for another year for the Appellant. (Exhibit 1, page 14)
4. On ██████, the Department authorized pull-on briefs for another ██████ months for the Appellant to finish toilet training. (Exhibit 1, page 13)
5. On ██████, the ██████, the Department's contractor for the Diaper and Incontinent Supplies Program, contacted the Appellant's mother and explained pull-on briefs are considered a transitional product.

The Appellant's mother stated the Appellant's Hirschsprung's disease keeps the Appellant from achieving toilet training. The Appellant's mother was advised that a letter of medical necessity should be obtained at the time of the next assessment. (Exhibit 1, page 13)

6. On ██████████, the Department approved pull-on briefs for another ██████ months and indicated a letter from the pediatric specialist regarding the Hirschsprung's disease would be needed to consider continuation. (Exhibit 1, pages 7 and 11-12)
7. On ██████████, ██████████ conducted a telephone nursing assessment with the Appellant's mother. The Appellant's mother reported the Appellant sees a regular pediatrician for Hirschsprung's disease. The Appellant's mother was to obtain the letter requested by the Department for review. (Exhibit 1, pages 7 and 9)
8. On ██████████, ██████████ spoke with the Appellant's mother because neither the teacher letter nor the letter from the pediatric specialist was received. ██████████ indicated they would allow the Appellant's mother one more month, but then would send to the Department for review without the requested information. (Exhibit 1, pages 7 and 9)
9. On ██████████, ██████████ attempted to call the Appellant's mother because the teacher letter and specialist letter had not been received. The Appellant's mother's voicemail was full on both numbers. (Exhibit 1, page 7)
10. On ██████████, the Department sent an Advance Action Notice denying coverage for pull-on briefs effective ██████████ because the information provided did not support coverage of the service. (Exhibit 1, page 6)
11. On ██████████, the Request for Hearing filed on the Appellant's behalf was received. (Exhibit 1, pages 5-6)

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 4/1/12]

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 4/1/12)

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 4/1/12)

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, 2012, Pages 41-42.*

The Department has authorized pull-on briefs for the Appellant since ██████████. A letter of medical necessity was requested from a pediatric specialist, and multiple extensions and reminders were given. The requested letter of medical necessity was never received. Pull-on briefs are considered a short-term transitional product and definitive progress must be detailed during re-assessment. Based on the information provided by the Appellant's mother to ██████████ it is unknown if the Appellants will ever be able to be completely toilet trained due to the disease status. (Contract Manager Testimony)

The Appellant's mother disagrees with the denial and testified the Appellant is severely multiply impaired. The Appellant's mother stated the policy manuals apply to normal people, but the Appellant is not normal. The Appellant is ██████% toilet trained at this point, but there are some things he does not have control over and never will. The Appellant's mother explained that due to the Hirschsprung's disease, the Appellant had surgery to pull through intestine to make an anus. The Appellant no longer sees a specialist, the correction was made at birth as best as they could. With the shortened GI tract and his medications, the Appellant has diarrhea and multiple bowel movements daily. There will be small staining, dime to quarter sized, in the pull-on brief by the next time the Appellant goes to the bathroom after a bowel movement. The pull-on brief is changed several times per day to prevent rash and skin breakdown. The Appellant requires assistance to change the pull on; he has the functional level of a ██████ year old. The Appellant is 5' 4" and would have to lie on the floor to have a diaper changed. It is rare for the Appellant to have an accident, about once every two months as a kidney issue can cause urine to back up and it may let loose. Liners have been tried in the past, but they wad up. The Appellant is active. The Appellant's mother does not have time to get the letters requested by the Department as her life is so overwhelming. (Mother Testimony)

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 Department has been authorizing pull-on briefs as a transitional product for toilet training. Definitive progress with toilet training was being demonstrated in the reviews since ██████████. The Appellant is now pretty much

toilet trained and accidents are rare. (Exhibit 1, pages 7-14; Mother Testimony) The Appellant's mother is requesting continued coverage of pull-on briefs for the small amount of leakage after bowel movements due to the Hirschsprung's disease, shortened GI tract and related issues. However, the evidence does not establish that the Appellant has the cognitive ability to independently care for his toileting needs. The Medicaid Provider Manual policy does not allow for coverage of pull-on briefs under those circumstances. Further, the Appellant's mother did not provide the letter of medical necessity requested by the Department to consider these issues, despite several extensions and reminders. 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 2/11/2013

***** 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.