

**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. 2013-23197 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 ██████████. ██████████, Appellant's ██████████ appeared on behalf of the Appellant. ██████████, Appeals Review Officer, represented the Department. His witness was ██████████, Contract Manager, Michigan Department of Community Health (Department).

**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 6-year-old female Medicaid beneficiary, born ██████████. (Exhibit A, p 4).
2. The Appellant has a history of 1P3 chromosome deletion and cognitive impairment. (Exhibit A, p 9).
3. On ██████████, pull-on briefs were approved for Appellant on a 6-month trial basis. Appellant's ██████████ was advised that Appellant would need to show demonstrative progress in initiating toileting. (Exhibit A, p 13; Testimony).
4. On ██████████, Appellant's ██████████ submitted a letter in which she indicated that Appellant had not shown any recent progress in her toileting program. (Exhibit A, p 8).

**Docket No. 2013-23197 CL**  
**Decision and Order**

5. On [REDACTED], Appellant's case was reviewed by [REDACTED] who determined that Appellant was no longer eligible for pull-on briefs because the letter from the teacher indicated that Appellant had not made recent progress in toileting. [REDACTED] also noted that Appellant had been in toilet training for 18 months and still uses the same amount of product. (Exhibit A, p 7).
6. On [REDACTED], the Department sent Appellant an Advance Action Notice informing her that pull-on briefs were no longer authorized. The Notice contained Appellant's rights to a hearing. The Notice, however, was sent to the wrong address and Appellant never received it. (Exhibit A, p 6).
7. In [REDACTED], Appellant's [REDACTED] contacted the Department because she stopped receiving pull-on's for Appellant. Appellant's [REDACTED] then learned of the Advance Action Notice from [REDACTED]. (Testimony).
8. Appellant's [REDACTED] obtained another letter from Appellant's [REDACTED] dated [REDACTED], which indicated that Appellant had made some progress in the toileting program. The teacher indicated that she believed Appellant should continue with the pull-on briefs. (Exhibit A, p 4).
9. On [REDACTED], the instant appeal was received by the Michigan Administrative Hearing System. (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 pull-on brief 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:

**Docket No. 2013-23197 CL**  
**Decision and Order**

- 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. (Emphasis supplied)

\*\*\*\*

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.

\*\*\*\*

██████████  
**Docket No. 2013-23197 CL**  
**Decision and Order**

*Medicaid Provider Manual (MPM) Medical Supplier,*  
██████████, page 42-43

\*\*\*

The Department witness testified that the Appellant did not demonstrate definitive progress in a toileting program as of the date of assessment. This conclusion was supported by the record. The Department witness explained that pull-ons are to be utilized as a short term use product and Appellant failed to demonstrate definitive progress in the toileting program. The letter received from the Appellant's ██████████ at ██████████ in ██████████ confirmed that the Appellant had minimal results with the toilet training program she had been on for 18 months.

Appellant was also informed that as of ██████████, her ██████████ was in a Medicaid HMO, Meridian Health Plan, and going forward will need to request pull-on's through the Plan.

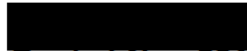
Appellant's ██████████ testified that the letter written in ██████████ was written by a substitute ██████████ and did not adequately explain Appellant's progress in the toileting program. Appellant's ██████████ indicated that the tab diapers Appellant is currently receiving are a waste because she tears the tabs even when she uses the toilet, requiring a new diaper every time. Appellant's ██████████ indicated that she would contact the Health Plan to seek pull-on's for Appellant.

The evidence provided by the Department established that the Appellant made no documented progress in her toileting program as of the date of review in ██████████. While the ██████████ who wrote the letter in ██████████ may have been mistaken about Appellant's progress, Appellant's lack of progress is also supported by the fact that she was using the same number of pull-on's some 18 months after being approved for the product. Furthermore, the Department must base its decision on the information it had on-hand when the review was conducted. Based on that information, Appellant had not shown any definitive progress in her toileting program.

Therefore, the Department's denial of coverage for pull-on briefs was properly reached in ██████████, 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.

  
Docket No. 2013-23197 CL  
Decision and Order

IT IS THEREFORE ORDERED that:

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

/s/

\_\_\_\_\_  
Robert J. Meade  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

cc:



Date Mailed: February 27, 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.