

**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. 2013-17277 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 behalf of the Appellant. ██████████, Appeals Review Officer, represented the Department. His witness was ██████████, Contract Manager, 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. (Exhibit 1).
2. The Appellant is a youth with autism and cognitive impairment. (Exhibit A, p 10).
3. On ██████████, pull-on briefs were approved for Appellant on a 9-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 been in timed toilet training for two years but had shown minimal progress. The ██████████ indicated that the team decided to change the goals of the toilet training program to focus on activities relating to Appellant changing his own pull-on briefs. (Exhibit A, p 9).

Docket No. 2013-17277 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 [REDACTED] indicated that Appellant has had minimal success with toilet training and because the new goals are related to activities of Assisted Daily Living, not actual toilet training. [REDACTED] noted that Medicaid policy requires definitive progress with toilet training for continuation of eligibility for pull-on briefs. (Exhibit A, p 8).
6. On [REDACTED], the Department sent Appellant an Adequate Action Notice informing him that pull-on briefs were no longer authorized. The Notice contained Appellant's rights to a hearing. (Exhibit A, p 7).
7. 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:

- 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:

Docket No. 2013-17277 CL
Decision and Order

- 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.

Medicaid Provider Manual (MPM) Medical Supplier,
[REDACTED], page 42-43

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 by the record. The Department witness explained that pull-ons are to be utilized as a short term use product and that on his reassessment the Appellant failed to demonstrate definitive progress in his bowel-bladder program.

██████████
Docket No. 2013-17277 CL
Decision and Order

The letter received from the Appellant's ██████████ at ██████████ in ██████████ confirmed that the Appellant had minimal results with the toilet training program he had been on for two years.

The Appellant's ██████████ testified that Appellant no longer participates in the toilet training program but that the new goals implemented at the ██████████ have resulted in Appellant now being about 90% independent with toileting. Appellant is able to pull down his pants, change his own pull-on, clean himself and wash his hands. Appellant's ██████████ testified that she does not think that he will ever toilet train because of his condition. Appellant's ██████████ indicated that Appellant could follow all of the steps of the toilet training program, except that when it came time to actually go, he could not. Appellant's ██████████ testified that she believes Appellant should be eligible for continued pull-on briefs under the section of the MPM that provides: "The beneficiary would not benefit from a bowel/bladder program but has the cognitive ability to independently care for his/her toileting needs."

The Department witness explained that Appellant is not eligible under that section of the MPM because that section is only for individuals who have no cognitive limitations. Here, Appellant does have cognitive limitations. (Exhibit A, p 10) And while Appellant's ██████████ asserted that Appellant did have the cognitive ability to independently care for his toileting needs, the evidence does not support this testimony. Appellant's ██████████ indicated that Appellant could follow all of the steps of the toilet training program, but that he could not actually use the toilet for a bowel movement. As such, Appellant does not have the ability to independently care for his toileting needs, at least as contemplated in the section of the MPM cited by Appellant's mother.

The evidence provided by the Department established that the Appellant has made no documented progress in his home and ██████████-based toilet training program as of the date of review, ██████████. The Appellant's representative has failed to provide any documentation that the Appellant has made definitive improvement [as required under the MPM] concerning his 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. 2013-17277 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 8, 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.