

**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. 2013-49976 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.*, and upon a Request for Hearing filed on behalf of Appellant.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother, appeared and testified on behalf of the minor Appellant. ██████████, Appeals Review Officer, represented the Michigan Department of Community Health (MDCH or Department). ██████████, Program Manager, testified as a witness for the Department.

ISSUE

Did the Department properly terminate the provision of incontinence supplies to Appellant?

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. (Respondent's Exhibit A, page 8).
2. Since ██████, Appellant has been receiving incontinence supplies, including pull-on briefs, through the Department. (Respondent's Exhibit A, page 7).
3. The Department reviews the provision of pull-on briefs every six months. (Testimony of ██████).
4. Past reviews have indicated that, after undergoing toilet training with a specialist, Appellant is toilet trained during the day. She still uses pull-on briefs with liners at night. (Respondent's Exhibit A, pages 9-16).

5. While not reflected in the reviews, Appellant's representative testified that Appellant occasionally has incontinence during the day. Appellant's representative acknowledges, however, that she reported that Appellant was toilet trained during the day. (Testimony of Appellant's representative).
6. During the most recent review, Appellant's doctor provided a letter. (Respondent's Exhibit A, page 8). In that letter, dated ██████████, Appellant's doctor stated:

This letter is a letter of medical necessity for my patient ██████████ (██████████) for her incontinence supplies. She needs these items due to having Down syndrome, Urinary incontinence, Chemotherapy treatment for over 25 years, and Sleep apnea. These supplies include pull on/pull ups, large disposable underpads, incontinence line/shield, gloves, and skin sealant/protectant ointment. Please continue to supply patient with these items. Any questions please call. [Respondent's Exhibit A, page 8.]

7. On or about ██████████, Appellant's case was reviewed by the Department with a Dr. ██████████ and it was determined that incontinence supplies should no longer be provided as they were only being provided for nighttime bedwetting/nocturnal enuresis and nocturnal enuresis is a behavioral condition, not a medical condition. (Respondent's Exhibit A, page 7).
8. On ██████████, the Department sent an Advance Action Notice stating that all incontinence products would no longer be provided as of ██████████ because the information provided did not support coverage of the service. (Respondent's Exhibit A, page 6).
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed on the Appellant's behalf in this matter. (Respondent's Exhibit A, pages 3-4).

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 is addressed in the MDCH Medicaid Provider Manual (MPM):

2.19 INCONTINENT SUPPLIES

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)

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)

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.

[MPM, January 1, 2013 version, Medical Supplier Chapter, pages 42-43]

The Department asserts that, under the above cited policy, the Appellant did not meet the criteria for pull-on briefs and any other incontinence supplies because that criteria requires, among other things, that the bowel/bladder incontinence be caused by a medical condition and Appellant's incontinence is caused by a behavioral condition.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her services. Here, Appellant has failed to meet that burden of proof.

As noted by the Department, Appellant only wears the pull-ons and has incontinence at night. As stated in its review, nocturnal enuresis is a behavioral condition, not a medical condition. Additionally, if the incontinence was related to a medical condition rather than a behavioral condition, Appellant should have incontinence both night and day.

The letter from Appellant's doctor provides that Appellant requires the supplies due to having Down syndrome, Urinary incontinence, Chemotherapy treatment for over 25 years, and Sleep apnea. However, urinary incontinence itself is simply the effect at issue in this case and the Department is looking for an underlying medical condition.

Moreover, the doctor's letter does not explain how Appellant's Down syndrome, history of chemotherapy, or sleep apnea both causes her incontinence and only causes that incontinence during the night. Appellant's representative, who is not a medical professional, could only speculate on the reasons behind the doctor's claim.

Accordingly, this Administrative Law Judge finds that Appellant failed to demonstrate that her incontinence is cause by a medical condition and that the Department erred in terminating the services at issue in this case.

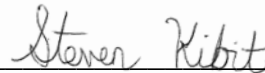
[REDACTED]
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the provision of incontinence supplies to Appellant.

IT IS THEREFORE ORDERED that:

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



Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: 8/2/2013

Date Mailed: 8/2/2013

[REDACTED]
cc: [REDACTED]

***** 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.