

**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:

Docket No. 2013-52284 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 ██████████ ██████████ mother, appeared on the Appellant's behalf. ██████████ ██████████, Appeals Review Officer, represented the Department. ██████████ ██████████, Section Manager, appeared as a witness for the Department.

ISSUE

Has the Department properly denied the Appellant 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. (Exhibit 1, page 7)
2. On ██████████ ██████████, ██████████ ██████████ the Department's contractor for the Diaper and Incontinent Supplies Program, conducted a nursing assessment by telephone with the Appellant's mother as a result of a request to restart pull-on briefs for the Appellant. It was reported that the Appellant has been on a toilet training program at school for just over a year, can pull pull-on briefs down to remove them but has a harder time pulling them up and needs assistance with changing them, does not initiate toileting at home, has a 0% success rate with bowel movements in the toilet, was urinating in a toilet but has regressed to having 0% success with urinating in the toilet. (Exhibit 1, page 8)

3. On ██████████ Appellant's teacher wrote a letter stating the Appellant is not toilet trained, does not initiate using the toilet while at school, has made progress with going into the restroom without a fuss when he is asked to do so, has not urinated or had a bowel movement at school since school started in the fall, on some occasions is wet and on other occasions is dry, and presently there is no consistency to his toileting. (Exhibit 1, page 6)
4. On ██████████, ██████████ spoke with the Appellant's mother regarding the Appellant not qualifying for pull-on briefs and sent a written notice of the denial and samples of other products. (Exhibit 1, page 8)
5. On ██████████, ██████████ spoke with the Appellant's mother, who had not received the written notice or samples. (Exhibit 1, page 8)
6. On ██████████ ██████████ sent an Adequate Action Notice to the Appellant denying coverage for pull-on briefs because the information provided did not support coverage of the service. (Exhibit 1, page 5)
7. On ██████████, the Request for Hearing filed on the Appellant's behalf was received. (Exhibit 1, page 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, 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,
October 1, 2012, Pages 41-42.*

The Department asserts that under the above cited policy, the Appellant did not meet the criteria for pull-on briefs. On [REDACTED], [REDACTED] conducted a nursing assessment by telephone with the Appellant's mother as a result of a request to restart pull-on briefs for the Appellant. It was reported that the Appellant has been on a toilet training program at school for just over a year, can pull pull-on briefs down to remove them but has a harder time pulling them up and needs assistance with changing them, does not initiate toileting at home, has a 0% success rate with bowel movements in the toilet, was urinating in a toilet but has regressed to having 0% success with urinating in the toilet. (Exhibit 1, page 8) On [REDACTED], Appellant's teacher wrote a letter stating the Appellant is not toilet trained, does not initiate using the toilet while at school, has made progress with going into the restroom without a fuss when he is asked to do so, has not urinated or had a bowel movement at school since school started in the fall, on some occasions is wet and on other occasions is dry, and presently there is no consistency to his toileting. (Exhibit 1, page 6) The Section Manager explained that the available information did not confirm enough to allow for coverage of pull-on briefs for the Appellant, particularly regarding definitive progress in toilet training. (Section Manager Testimony)

The Appellant's mother testified that the Appellant was diagnosed with Autism on [REDACTED]. They have also continued to work on toilet training and the Appellant is making some progress. The Appellant will be starting kindergarten and will need pull-on briefs. With diapers, the Appellant has to be laid down to be changed, which does not allow for any independence. However, the Appellant's mother acknowledged that the information provided for the [REDACTED] nursing assessment was accurate at that time. (Mother Testimony)

This ALJ understands the Appellant's mother's concerns that diapers do not allow for any independence with toileting and that in the past nine months, they have continued to work on toilet training and the Appellant is making some progress. However, this ALJ is limited to reviewing the determination to deny pull-on briefs for the Appellant based on the information available at the time the determination was made, specifically the [REDACTED] nursing assessment and teacher letter.

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 submitted information in this case was not sufficient to establish that the Appellant meets the criteria for pull-on briefs. The information reported during the nursing assessment and in the school letter did not establish that the Appellant has the cognitive ability to independently care for his toileting needs or that he was making definitive progress with toilet training at that time. (Exhibit 1, pages 6 and 8) The Department's denial must be upheld based on the available information at the time of the assessment.

[REDACTED]
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At any time, the Appellant can have a new request for pull-on briefs submitted with additional documentation to establish that the Appellant has met the criteria set out in the Medicaid Provider Manual policy.

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 decision is **AFFIRMED**.

/s/
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

CL/db

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.