

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. 2013-60232 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. ██████████, Contract Manager, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of pull-on briefs for the 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 an ██████-year-old Medicaid beneficiary diagnosed with Smith–Magenis Syndrome (SMS), neurogenic bladder, severe cognitive impairment, and incontinence of bowel and bladder. (Exhibit 1, pages 12-13)
2. On ██████████, a behavior specialist working with the Appellant wrote a letter to communicate the necessity for the Appellant to wear pull-on briefs. In part, the letter stated the Appellant made incredible gains through the summer of ██████ following participation in a ██████████ program. In just over a month the Appellant went from having never been successful on the toilet to having an average of only one accident per day. With the transition back to the school year there was a decrease in success. The documentation from staff in the home showed progress, but it was inconsistent. (Exhibit 1, pages 16-17)

3. On ██████████, the Appellant's teacher wrote a letter regarding the Appellant's toilet training program. In part, the letter states the Appellant: occasionally initiates toileting but usually is instructed by an adult to use the bathroom; once on the toilet does not need assistance but is unable to wipe herself; can pull up clothing with minimal assistance; is occasionally dry and urinates in the toilet approximately ██████ of the time; has bowel movements in the toilet ██████ of the time, but will usually occur in her pull-on brief. (Exhibit 1, page 15)
4. 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 review for pull-on briefs for the Appellant. How often the Appellant is placed on the toilet was reported. It was also reported that the Appellant: needs assistance with cuing and prompting, but can pull pull-on briefs on; has 1-2 bowel movements per day, ██████ in the toilet; and is not dry overnight. A teacher letter regarding toilet training success was requested. (Exhibit 1, page 13)
5. On ██████████, the Appellant's teacher wrote a letter regarding the Appellant's toilet training program. In part, the letter states the Appellant: occasionally initiates toileting but usually is instructed by an adult to use the bathroom; once on the toilet does not need assistance but is unable to wipe herself; can pull up clothing with minimal assistance but needs assistance with fasteners; is occasionally dry and urinates in the toilet approximately ██████ of the time at school; has bowel movements in the toilet ██████ of the time at school. (Exhibit 1, page 8)
6. On ██████████, a behavior specialist working with the Appellant wrote a letter to communicate the necessity for the Appellant to wear pull-on briefs. In part, the letter stated there was a decrease in success with toilet training through the fall of ██████ and winter ██████ but gains were made starting late winter/early spring ██████. An ██████████ toileting chart from staff documentation in the home showed inconsistency and wet pants ██████ of ██████ days. (Exhibit 1, pages 9-11)
7. On ██████████, the Appellant's mother spoke with ██████████ about the status of the order. ██████████ was awaiting the decision from the State, and advised the information would be resent to the State and followed up with a phone call. (Exhibit 1, pages 12-14)
8. On ██████████ received the faxed denial from the State's review of the Appellant's request. A consulting physician participated in the State's review. It was noted that the home charting indicated a decrease in success since ██████ and Medicaid policy requires definitive progress for continuation. It was also noted that the Appellant has been

receiving the same quantity of pull-on briefs for ██████████ and ██████████ so there has been no decrease in the amount of product. (Exhibit 1, page 7)

9. 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 6)
10. On ██████████, the Request for Hearing filed on the Appellant's behalf was received. (Exhibit 1, page 5)

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

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)
(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,
April 1, 2013, Pages 42-43
(Underline added by ALJ).*

The Department asserts that under the above cited policy, the Appellant did not meet the criteria for pull-on briefs.

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 review for pull-on briefs for the Appellant. How often the Appellant is placed on the toilet was reported. It was also reported that the Appellant: needs assistance with cuing and prompting, but can pull pull-on briefs on; has 1-2 bowel movements per day, ██████ in the toilet; and is not dry overnight. A teacher letter regarding toilet training success was requested. (Exhibit 1, page 13)

On ██████████, the Appellant's teacher wrote a letter regarding the Appellant's toilet training program. In part, the letter states the Appellant: occasionally initiates toileting but usually is instructed by an adult to use the bathroom; once on the toilet does not need assistance but is unable to wipe herself; can pull up clothing with minimal assistance but needs assistance with fasteners; is occasionally dry and urinates in the toilet approximately ████████ of the time at school; has bowel movements in the toilet ████████ of the time at school. (Exhibit 1, page 8)

On ██████████, a behavior specialist working with the Appellant wrote a letter to communicate the necessity for the Appellant to wear pull-on briefs. In part, the letter stated there was a decrease in success with toilet training through the fall of ████████ and winter ████████, but gains were made starting late winter/early spring ████████. An ████████ toileting chart from staff documentation in the home showed inconsistency and wet pants ████████ of ████████ days. (Exhibit 1, pages 9-11)

On ██████████ received the faxed denial from the State's review of the Appellant's request. A consulting physician participated in the State's review. It was noted that the home charting indicated a decrease in success since ████████ and Medicaid policy requires definitive progress for continuation. It was also noted that the Appellant has been receiving the same quantity of pull-on briefs for ████████ and ████████ so there has been no decrease in the amount of product. (Exhibit 1, page 7) The Contract Manager explained that the available information did not establish definitive progress in toilet training to allow for coverage of pull-on briefs for the Appellant. (Section Manager Testimony)

The Appellant's mother disagrees with the denial and testified that the Appellant can pull up her pants and sit on the toilet. The Appellant does not feel the need to urinate or know when she has to urinate. The Appellant is ████████ pounds and ████████ feet ████████ inches and has severe cognitive delay. The Appellant will not lie on the floor to have a diaper changed. The family has help in the home daily. The Appellant throws severe tantrums, which include ripping and throwing the incontinence products. The Appellant's mother has instructed staff not to approach the Appellant with a diaper when she is having a tantrum. The Appellant's mother stated that the Appellant is having more success with bowel movements than what was reported. The Appellant has more success when she is back in school than over the summer. Further, over this summer there was an adjustment to the Appellant's medications. Now that the Appellant is back on medication and in school, she is doing better with toilet training. The Appellant's mother stated they cannot afford to buy these products for the Appellant. (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 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 letters from the teacher and behavioral specialist did not establish that the Appellant has the cognitive ability to independently care for her toileting needs or that she was making definitive progress with toilet training at that time. Rather, the evidence indicates severe cognitive impairment that precludes independently caring for her toileting needs and inconsistent progress with toilet training at home and no change in success rates at school. (Exhibit 1, pages 8-17; Mother Testimony) The Department's denial must be upheld based on the available information at the time of the assessment.

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.