

**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. 2013-67334 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 Appellants request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother, appeared on Appellant's behalf. Appellant also appeared. ██████████, 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. Appellant is a ██████-year-old Medicaid beneficiary, born ██████████. (Exhibit A, p 6; Testimony)
2. Appellant has a history of cognitively impaired seizure disorder and nocturnal enuresis. (Exhibit A, p 6; Testimony)
3. On ██████████, ██████████ Supply Company, the Department's contractor, completed a 12 month review with Appellant's mother regarding Appellant's use of pull-ons. The nurse reviewer noted that the Department had made an exception in the past to allow Appellant to receive pull-ons and that the Department was now requesting updated medical documentation from both Appellant's neurologist and his urologist supporting the continued medical need for pull-ons. (Exhibit A, p 7; Testimony)

Docket No. 2013-67334 CL
Decision and Order

4. On [REDACTED], the reviewer again spoke with Appellant's mother because she had not received the requested medical documentation from Appellant's neurologist and urologist. Appellant's mother indicated that she would get the letters to the reviewer by the end of [REDACTED]. (Exhibit A, p 7; Testimony).
5. On [REDACTED], Appellant's mother submitted an updated letter from Appellant's neurologist. (Exhibit 2, p 1)
6. On [REDACTED], Appellant's mother submitted a prescription from Appellant's urologist, requesting that Appellant be provided adult diapers. A note on the prescription indicated that Appellant was not due to see his urologist until [REDACTED]. (Exhibit 2, p 3)
7. Based on the lack of updated medical information from both Appellant's neurologist and urologist, as requested, on [REDACTED], the Department sent Appellant's mother an Advance Action Notice informing her that pull-on briefs were no longer authorized for Appellant. The Notice contained Appellant's rights to a hearing. (Exhibit A, p 5; Testimony)
8. 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.

Docket No. 2013-67334 CL
Decision and Order

- 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.

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 Section
October 1, 2013, pp 42-43

██████████
Docket No. 2013-67334 CL
Decision and Order

The Department witness testified that on ██████████, the nurse reviewer completed a 12 month review with Appellant's mother regarding Appellant's use of pull-ons. The reviewer noted that the Department had made an exception in the past to allow Appellant to receive pull-ons and that the Department was now requesting updated medical documentation from both Appellant's neurologist and his urologist supporting the continued medical need for pull-ons. The Department witness indicated that on ██████████, the reviewer again spoke with Appellant's mother because she had still not received the requested medical documentation from Appellant's neurologist and urologist. On or about ██████████, the nurse reviewer informed the Department that they had received an updated letter from Appellant's neurologist, but only a prescription from Appellant's urologist. Based on the lack of updated medical information from both Appellant's neurologist and urologist, as requested, the Department sent Appellant's mother an Advance Action Notice informing her that pull-on briefs were no longer authorized for Appellant.

Appellant's mother testified that her son is in a behavioral program in the sense that he is reminded to void himself every couple of hours while in school and at home. Appellant's mother indicated, however, that she obviously cannot remind him at night, so that is why they requested the pull-ons to start with. Appellant's mother indicated that she did get an updated letter from her neurologist dated ██████████, which was forwarded to the nurse reviewer. Appellant's mother indicated that from the urologist, all she could get was a prescription with a note written on it, because Appellant is not scheduled to see the urologist until ██████████. However, Appellant's mother indicated that she did forward that prescription to the reviewer as well. Appellant's mother testified that Appellant's condition is cognitive, not urological, so Appellant's urologist does not want to continue to do any more tests on Appellant.

Appellant's mother indicated that there has been no change to Appellant's medical condition since the pull-ons were approved one year ago. Appellant's mother referred to a decision by another administrative law judge in ██████████, which reversed the Department's denial of pull-ons for Appellant. Appellant's mother was advised that prior decisions from the tribunal are not binding precedent, but the undersigned agreed to review the prior decision. (See Exhibit 2, pp 3-7). Upon review, and for the reasons outlined below, the undersigned does not agree with the conclusions reached by the previous administrative law judge.

Appellant's mother also testified that Appellant will never make any progress in a bowel/or bladder program because his problems are cognitive, not physical.

In response, the Department witness testified that per Medicaid policy, pull-ons are intended to be used on a short term basis and they can only be approved if a person is showing some progress in a bowel/bladder training program. The Department witness

██████████
Docket No. 2013-67334 CL
Decision and Order

also indicated that cloth diapers are an alternative to pull-ons and could be covered through Medicaid, depending on what is in the urology report.

The evidence provided by the Department established that Appellant had previously been approved for an exception to receive pull-ons because he did not meet the normal criteria for pull-ons. During the 12 month review following the exception, Appellant's mother was informed that the Department would need updated medical documentation from both Appellant's neurologist and urologist supporting the continued medical need for pull-ons. While Appellant's mother did submit an updated letter from Appellant's neurologist, she could only get a prescription from the urologist because Appellant is not scheduled to see the urologist until ██████████. Appellant's mother also did not submit any supporting medical documentation from either the neurologist or urologist. Without updated documentation each year from Appellant's neurologist and urologist, the Department had no basis on which to consider a continued exception for pull-ons and the denial of pull-ons was proper. The prior exception was only approved for 12 months and would need to be renewed every 12 months. Each time the request is renewed, updated and complete medical information must be resubmitted.

Furthermore, Medicaid policy clearly states that pull-ons are only covered if a beneficiary is actively participating in and can show progress in a bowel/bladder program. Here, Appellant's mother has indicated that Appellant has not, and will not, ever show progress in a bowel/bladder program.

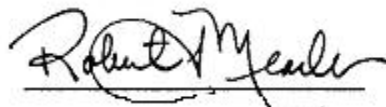
Therefore, the Department's denial of coverage for pull-on briefs was properly reached and must be upheld.

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.

IT IS THEREFORE ORDERED that:

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



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

[REDACTED]
Docket No. 2013-67334 CL
Decision and Order

cc:

[REDACTED]

[REDACTED]

Date Signed: December 2, 2013

Date Mailed: December 2, 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.