

**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. 2013-67888 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.*, and upon a Request for Hearing filed on behalf of the minor Appellant.

After due notice, a hearing was held on ██████████ Appellant's mother, appeared and testified on behalf of the minor Appellant. ██████████ Appellant's Direct Care Worker, and ██████████ Children's Waiver Case Manager at ██████████, also testified as witnesses for Appellant. ██████████ Appeals Review Officer, represented the Michigan Department of Community Health (MDCH or Department). ██████████ Contract Manager, and ██████████, Medical Consultant, from the MDCH's Program Review Division and ██████████, Nurse Manager, and ██████████ Assessment Nurse, from ██████████. testified as witnesses for the Department.

ISSUE

Did the Department properly decide to terminate the provision of pull-on briefs 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 an ██████████ year-old who has been diagnosed with autistic disorder, an unspecified lack of normal physiological development, developmental delays, a metabolic disorder, and a B-12 deficiency. (Respondent's Exhibit A, page 8; Respondent's Exhibit B, pages 2-3).

2. Appellant also has urinary and fecal/bowel incontinence. (Respondent's Exhibit A, page 8; Respondent's Exhibit B, page 2).
3. In ██████████ Appellant was prescribed incontinence supplies, including pull-on briefs, and requested such supplies through the Department. (Respondent's Exhibit B, page 3).
4. The request was approved and the supplies were authorized for ██████ year. (Respondent's Exhibit A, page 12).
5. The incontinence supplies were provided through ██████████ ██████ (Respondent's Exhibit B, page ██████).
6. Appellant's case was reviewed and the incontinence supplies were reauthorized in ██████████ (Respondent's Exhibit A, page 11).
7. At that time, it was noted that Appellant was using a behaviorist as part of a toilet training program with ██████████ (Respondent's Exhibit A, page 11).
8. The reauthorization was for ██████ months. (Respondent's Exhibit A, page 11).
9. However, while the reauthorization was for ██████ months, no review was completed for another ██████ years and Appellant continued to receive incontinence supplies, including pull-on briefs, that entire time. (Testimony of Appellant's representative; Testimony of ██████████).
10. On ██████████ telephoned Appellant's representative in order to conduct a review of Appellant's services. Later, she transferred the call to ██████████ and ██████████ also spoke with Appellant's representative. (Respondent's Exhibit A, page 9).
11. Appellant's case was then reviewed by ██████████ and the doctor determined that pull-on briefs should no longer be provided as Appellant has been receiving them for ██████ years despite the fact that they are only a short-term transitional product; the last authorization was made years ago, but only for ██████ months; and there is no evidence of any definitive progress in a bowel/bladder program. (Respondent's Exhibit A, page 7; Testimony of ██████████; Testimony of ██████████).
12. On ██████████ the Department sent an Advance Action Notice stating that pull-on briefs would no longer be provided as of ██████████ because the information provided did not support coverage of the service. (Respondent's Exhibit A, page 5).

13. 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).
14. Appellant has continued to receive pull-on briefs while the appeal is pending. (Testimony of Appellant's representative).

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, July 1, 2013 version
Medical Supplier Chapter, pages 42-43*

Here, the Department terminated pull-on briefs on the basis that the information provided did not support coverage of the service. (Respondent's Exhibit A, page 5). Specifically, as noted in the comments regarding the review and the testimony of the Department's witnesses, the Department terminated pull-on briefs because Appellant has been receiving them for ██████ years despite the fact that they are only a short-term transitional product; the last authorization was made years ago, but only for ██████ months; and there is no evidence of any definitive progress in a bowel/bladder program. (Respondent's Exhibit A, page 7; Testimony of ██████; Testimony of Donovan).

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred.

In this case, while pull-on briefs are a short-term product, there are no express limitations found in policy regarding how long someone can receive pull-on briefs and the Department's witnesses concede that, when appropriate, pull-on briefs can be approved for years.

Regular reviews are required for such an authorization and there have been no such regular reviews documenting Appellant's progress, if any, in a bowel/bladder program here. However, that lack of reviews is completely the fault of [REDACTED] and the Department as they simply failed to conduct the required reviews for years.

Moreover, both Appellant's representative and Compton, the Children's Waiver Case Manager at [REDACTED], testified about and were prepared to document Appellant's continuing participation and progress in a bowel/bladder program through the Children's Waiver Program.

This Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time it made that decision and, in this case, it does appear that the Department reviewers had no knowledge of a Appellant's continuing participation in a bowel/bladder program or his progress in that program.

Nevertheless, Appellant's representative credibly testified that she tried to report the program to both [REDACTED] and [REDACTED] while they were gathering the information for the review. [REDACTED] and [REDACTED] testified that they have no memory of such an attempt, but do not otherwise contradict Appellant's representative's testimony. Moreover, as discussed above, the previous review of Appellant's services did note that Appellant was using a behaviorist as part of a toilet training program with [REDACTED] which suggests that both [REDACTED] and the Department had notice of the program.

It is difficult to gauge Appellant's progress in his bowel/bladder program given the [REDACTED] year gap in reviews and the lack of information regarding his current program, but the lack of reviews and other relevant information is not been the fault of the minor Appellant or his mother.

Accordingly, this Administrative Law Judge finds that the Department's reassessment of Appellant's services was incomplete and lacked relevant information that Appellant's representative attempted to provide. Additionally, as the reassessment was incomplete, this Administrative Law Judge also finds that the Department's decision must be reversed and that a new assessment must be performed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly decided to terminate Appellant's receipt of pull-on briefs.

[REDACTED]
Docket No. 2013-67888 CL
Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decision is **REVERSED** and it must initiate a reassessment of the authorization of pull-on briefs.

Steven Kibit

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/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.