

**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.** 2014-2336 CL

██████████

██████████

**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 ██████████ Appellant's daughter, appeared and testified on Appellant's behalf. Appellant and ██████████, one of Appellant's aides, also testified for Appellant. ██████████ Appeals Review Officer, represented the Michigan Department of Community Health (MDCH or Department). ██████████, a Contract Manager in the MDCH's Program Review Division, testified as a witness for the 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 who has been diagnosed with Multiple Sclerosis. (Respondent's Exhibit A, pages 6-8).
2. On or about ██████████ Appellant's representative/daughter requested pull-on briefs from the Department on Appellant's behalf. (Respondent's Exhibit A, pages 6-8; Testimony of ██████████).

3. Appellant had previously received incontinence supplies through the Department, but the services had stopped at some point and this was a new request for pull-on briefs. (Respondent's Exhibit A, pages 6-8; Testimony of ██████████)
4. During the review of the request, Appellant's representative reported that Appellant was dependent on others for all of Appellant's toileting needs. (Respondent's Exhibit A, page 7; Testimony of Appellant's representative).
5. The Department also recorded Appellant's representative as stating that Appellant no longer has an awareness of when she has to urinate or have a bowel movement. (Respondent's Exhibit A, page 7).
6. Appellant's representative, on the other hand, testified that she reported that Appellant can verbalize her toileting needs and that her aides will help her to a commode if they are at home. (Testimony of Appellant's representative).
7. Nevertheless, it is undisputed that Appellant uses incontinence supplies both inside and outside the home. (Respondent's Exhibit A, page 7; Testimony of Appellant's representative; Testimony of ██████████).
8. The Department informed Appellant's representative at that time that diapers could be supplied through the Department. (Respondent's Exhibit A, page 7; Testimony of Appellant's representative).
9. However, Appellant's representative was not interested in diapers instead of pull-on briefs. (Respondent's Exhibit A, page 7; Testimony of Appellant's representative).
10. According to Appellant's representative, the pull-on briefs are easier to take off. (Respondent's Exhibit A, page 7). Appellant's aide also testified during the hearing that diapers can cause sores. (Testimony of ██████████).
11. On ██████████, the Department sent Appellant written notice that her request was denied on the basis that the information provided did not support coverage. (Respondent's Exhibit A, page 5).
12. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter. (Respondent's Exhibit A, 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 policy regarding coverage of incontinence supplies, including pull-on briefs is addressed in the Medicaid Provider Manual (MPM). With respect to such supplies, the applicable version of the MPM states:

### **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, while the Department is willing to approve diapers, it denied Appellant's request for pull-on briefs on the basis that the information received from Appellant's representative did not support coverage of pull-on briefs.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request.

Appellant cannot meet that burden of proof and the Department's decision must be affirmed. The MPM quoted above clearly provides that pull-on briefs are only covered for beneficiaries age 21 when the beneficiary is able to care for his/her toileting needs independently or with minimal assistance from a caregiver. See MPM, July 1, 2013 version, Medical Supplier Chapter, page 43. However, in this case, it is undisputed that Appellant is completely dependent on others for her toileting needs and can, at most, verbalize when she has to urinate or have a bowel movement.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's request for pull-on briefs.

[REDACTED]  
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Decision and Order

**IT IS THEREFORE ORDERED** that:

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

*Steven Kibit*

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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.