

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. 2014-30374 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother, appeared on Appellant's behalf. ██████████, Appellant's father, also appeared. ██████████, Appeals Review Officer, represented the Department. Her witness was ██████████, Contract Manager, MDCH.

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 an ██████████ female Medicaid beneficiary, born ██████████. (Exhibit A, p 9; Testimony)
2. Appellant is diagnosed Down's syndrome, nocturnal enuresis, sleep apnea, ADHD, history of leukemia, history of chemotherapy, abdominal tumor removed, and incontinence. (Exhibit A, p 10; Testimony)
3. Appellant has been receiving pull-on briefs since ██████████. On ██████████, a nursing assessment was conducted to determine if Appellant was still eligible to receive pull-on briefs. The nurse reviewer interviewed Appellant's mother, who indicated that Appellant wears pull-on briefs at night and while napping, that Appellant is wet overnight about 2 times per week, and during naps about once every three months, that Appellant is wet during the day once every two months, and that mother cannot estimate when Appellant will have an accident so the child wears pull-on briefs "just in case". (Exhibit A, pp 10-12; Testimony)

4. On ██████████ Appellant's teacher submitted a letter in which she indicated that Appellant has had two accidents during the school day between ██████████, that Appellant is not consistent in initiating when she needs to use the restroom, but is fully independent once in the restroom, and that due to her cognitive ability, Appellant must be reminded frequently throughout the school day to leave the classroom to use the facilities. (Exhibit A, p 7; Testimony)
5. On ██████████, Appellant's case was reviewed by ██████████ who determined that Appellant was no longer eligible for pull-on briefs because the letter from the school indicated that Appellant is toilet trained and needs pull-on briefs "just in case" of an accident. ██████████ noted that Medicaid policy dictates that pull-on briefs are only to be used as a short-term transitional product and are not for long term use. (Exhibit A, p 6; Testimony)
6. On ██████████, the Department sent Appellant an Adequate Action Notice informing her that pull-on briefs were no longer authorized. The Notice contained Appellant's rights to a hearing. (Exhibit A, p 5; Testimony)
7. On ██████████, 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.

- 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. (Emphasis supplied)

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.

The Department witness testified that the Appellant was found to be no longer eligible for pull-on briefs because Appellant was toilet trained and because Appellant's mother indicated that the pull-on briefs were being used "just in case" Appellant had an accident. The Department witness also indicated that Appellant's mother informed the nurse reviewer that Appellant was only wet about 1 time every 3 months, at least during the day. (Appellant is wet at night approximately 2 times per week). The Department witness explained that, per Medicaid policy, pull-on briefs are to be utilized as a short term use product during a toilet training program, usually for a maximum of 2-3 years. Here, the Department witness pointed out that Appellant received pull-on briefs from ██████████.

Appellant's parents testified that it seemed odd that the Department seemed to be focusing on the comment that pull-on briefs were being used "just in case" given that any wetting episode for a █ year old in █ grade of high school is highly embarrassing and traumatizing. Appellant's parents testified that Appellant's doctors say Appellant is incontinent, that incontinence is a medical condition, and that pull-on briefs should, therefore, be covered. Appellant's parents indicated that Appellant has had pull-on briefs since █ and that nothing in her medical condition has changed and it is not going to change or improve. As such, Appellant's parents indicated that they could not understand why authorization for pull-on briefs was stopped. Appellant's parents also pointed out that Appellant's sleep apnea also makes it so Appellant does not respond to wetting herself at night.

In response, the Department witness testified that diapers and supplies would still be covered for Appellant. Appellant's mother indicated, however, that because of manual dexterity issues, it is next to impossible for Appellant to use diapers. Appellant's mother also pointed out that all of the incontinent supplies the family was previously receiving were also stopped when the pull-on briefs were stopped. The Department witness indicated that she would contact the supplier to make sure the other supplies were continued, provided there was a current prescription for those supplies on file with the supplier. If there is not a current prescription, the Department witness testified that she would have the supplier notify Appellant's family.

The evidence provided established that Appellant is toilet trained and uses pull-on briefs "just in case" she has an accident, and that Appellant is only wet about 1 time every 3 months, at least during the day. As indicated above, pull-on briefs "are considered a short-term transitional product", to be used while an individual is being toilet trained, and here Appellant is toilet trained and has been receiving pull-on briefs since █. Clearly, Appellant's use of pull-on briefs for over 8 years cannot be considered "short-term" under any definition of that term. While it clearly would be more convenient for Appellant to continue the use of pull-on briefs, as opposed to diapers, convenience alone is not enough to justify approval of pull-on briefs under the above-cited policy. If Appellant's family wishes to continue using pull-on briefs for Appellant, they would have

to assume the cost of those briefs themselves. Under Medicaid policy, pull-on briefs are not covered long-term for someone with Appellant's conditions.

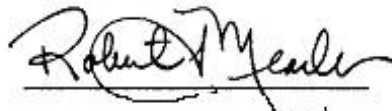
Therefore, the Department's denial of coverage for pull-on briefs was properly reached and must be upheld.

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

cc: [REDACTED]

Date Signed: 04/08/2014

Date Mailed: 04/08/2014

***** 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.