

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant

Docket No. 15-003228 PAC

██████████

██████████

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 Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Appellant appeared and testified on her behalf. ██████████, Appeals Review Officer, represented the Department of Health and Human Services. ██████████, Contract Manager, 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 has a ████████ year-old son who has been diagnosed with cognitively impaired autism. (Exhibit A, page 8).
2. In ██████████, Appellant requested pull-on briefs for her son. (Testimony of ██████████).
3. On ██████████, a review was conducted with Appellant. (Exhibit A, pages 11-12).
4. During that review, Appellant reported that, at home, her son is taken to the bathroom every hour and whenever he indicates a need. (Exhibit A, page 12).
5. She also indicated that her son is able to pull his pants up-and-down. (Exhibit A, page 12).

6. She further reported that her son does not have any bowel movements while at school, but has them ██████ to ██████ times a day at home. (Exhibit A, page 12).
7. The Department then approved Appellant's request for pull-on briefs for her son for ██████ months. (Exhibit A, page 12).
8. Near the end of that ██████ month period, Appellant requested that pull-on briefs again be approved for her son. (Testimony of ██████).
9. On ████████████████████, a review was conducted with Appellant's husband. (Exhibit A, pages 8-10).
10. During that review, Appellant's husband stated that their son is undergoing toilet training at home and at school, but that he needs assistance getting on-and-off the toilet and getting his pull-on briefs on-and-off. (Exhibit A, page 9).
11. Appellant's husband also stated that their son does not indicate a need to go to the bathroom. (Exhibit A, page 9).
12. On ████████████████████ the Department also received a letter from a Teacher-Consultant at Appellant's son's school. (Exhibit A, page 9).
13. In that letter, the Teacher-Consultant wrote that Appellant's son has been toilet-training at the school for ██████ years and that, in the last year, he has learned how to pull his pants and underwear down independently. (Exhibit A, page 7).
14. The letter also stated that, at school, Appellant's son is taken to the bathroom every hour and whenever else he indicates a need. (Exhibit A, page 7).
15. The letter further stated that Appellant's son has reduced the number of accidents in the past year, but that he still holds bowel movements while at school. (Exhibit A, page 7).
16. On ████████████████████, the Department sent Appellant written notice that the request for pull-on briefs had been denied because the information provided did not support coverage. (Exhibit A, page 5).
17. On ████████████████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (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.

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM) and, with respect to pull-on briefs, the applicable version of the MPM states:

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.

*MPM, January 1, 2015 version
Medical Supplier Chapter, page 43*

Pursuant to the above policy, the Department denied Appellant's request for pull-on briefs for her son on the basis that her son was not demonstrating definitive progress in a bowel/bladder program. In particular, the Department's witness noted that Appellant's son is using the same amount of supplies as before and he is either at the same level in his toilet training as before, as indicated by the school's letter, or doing worse, as indicated by his father.

In response, Appellant testified that her husband did not understand the purpose of the review and gave inaccurate information. She also testified that her son has made progress over the years and that he only received pull-on briefs for █████ months, which is too short of a time to make any definitive judgments. Appellant further testified that denying the request would be giving up on her son, which she refuses to do.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying Appellant's request. Moreover, in reviewing the Department's decisions, the undersigned Administrative Law Judge is limited to reviewing the decisions in light of the information available at the time they were made.

Here, given the information available at the time, Appellant has failed to meet her burden of proof and the Department's decision must therefore be affirmed. The above policy requires that a beneficiary is demonstrating definitive progress in a bowel/bladder program while, in this case, it is undisputed that Appellant's son is using the same amount of supplies as before, which would not be expected if he was making progress. Appellant's husband's reports also indicated that their son is regressing in a number of areas and, even if he misunderstood what the review was for, it is not clear why he would provide inaccurate information and, regardless, his reports were the information the Department had to go on at the time. Additionally, even if the father's reports are discounted, the letter from the school also failed to describe any progress and, while Appellant's son only received the pull-on briefs for █████ months, the above policy identifies the items as short-term transitional products and expressly requires a reassessment every █████ months.

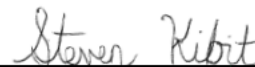
To the extent Appellant has additional or updated information to provide, she is free to resubmit the request, along with all the relevant documents and information. With respect to the decisions at issue in this case, however, the Department's decision must be affirmed given the available information.

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.

IT IS THEREFORE ORDERED THAT:

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



Steven Kibit

Administrative Law Judge
for Nick Lyon, Director

Michigan Department of Health and Human Services

Date Signed: ██████████
Date Mailed: ██████████

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Docket No. 15-003228 PAC
Decision and Order

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***** 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.