

**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.

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**Docket No.** 15-008103 PA

**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.*, and upon a request for hearing filed on the minor Appellant's behalf.

After due notice, a telephone hearing was held on ██████████. ██████████, Appellant's father, appeared and testified on Appellant's behalf. ██████████, Appellant's mother, and ██████████ Appellant's supports coordinator at Macomb County Community Mental Health, also testified as witnesses for Appellant. ██████████ Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████, 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 is a ██████████ who has been diagnosed with a history of subdural hemorrhage; hemophilia; and delay in development. (Exhibit A, page 8).
2. Between ██████████ and ██████████, Appellant was authorized to receive pull-on briefs through the Department. (Testimony of Hanson)
3. The authorizations ended in ██████████ after the Department denied Appellant's request for another six months of pull-on briefs. (Exhibit A, page 18).

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4. In that denied request, Appellant was asking for 3-4 pull-on briefs per day and her school reported that she was taken to the restroom about four times a day; she does not wipe herself; she has had no bowel movements in the toilet that school year; and she has only had a few bowel movements in her pull-up. (Exhibit A, pages 19-21).
5. After the request for reauthorization of pull-on briefs were denied, Appellant's family began privately paying for them and Appellant has continued to use pull-on briefs. (Testimony of Appellant's representative).
6. In [REDACTED], Appellant was approved for six months of pull-on briefs through the Department. (Testimony of Appellant's representative; Testimony of Hanson).
7. In [REDACTED], Appellant requested that the pull-on briefs be authorized for another six months. (Exhibit A, page 8).
8. In that request, Appellant again asked for 3-4 pull-on briefs per day. (Exhibit A, page 8).
9. During an assessment with a nurse from J&B Medical Supply, Inc., her father also reported that, while Appellant will always need diapers at night due to her brain injury and medications helping her sleep, Appellant had really improved in the past few months when using pull-on briefs during the day; she initiated toileting 50% of the time and is otherwise given reminders; she can pull her pants up-and-down and toilet herself; she still needs assistance changing; and she has 90-95% success with bowel movements and 90% with urine. (Exhibit A, page 9).
10. Appellant's school also submitted a letter stating that Appellant is becoming more independent in using the bathroom; she is asked three times a day if she has to use the bathroom; she usually gets up on her own to use the bathroom twice a day; she is able to pull her own clothes up-and-down; she is learning to wipe herself after a bowel movement; and she rarely has accidents. (Exhibit A, page 7).
11. A [REDACTED] reviewed the request for the Department and determined that it should be denied as Medicaid policy only covers pull-on briefs as a transitional product and Appellant has been using pull-on briefs, either through the Department or through private pay, since 2009. (Exhibit A, page 6).
12. On [REDACTED], the Department sent Appellant's parents written notice that the request for pull-on briefs was denied as the information provided did not support coverage. (Exhibit A, page 5).

13. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter regarding that denial. (Exhibit A, page 5).

**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 statutes, 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 in part:

**2.19 INCONTINENT SUPPLIES**

<p><b>Definition</b></p>	<p>Incontinent supplies are items used to assist individuals with the inability to control excretory functions.</p> <p>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:</p> <ul style="list-style-type: none"> <li>▪ Independent care of bodily functions through proper toilet training.</li> <li>▪ Appropriate self-catheter care to decrease risk of urinary infections and/or avoid bladder distention.</li> <li>▪ Proper techniques related to routine bowel evacuation.</li> </ul>
<p><b>Standards of Coverage (Not Applicable to CSHCS Only Beneficiaries)</b></p>	<p><b>Diapers, incontinent pants, liners, and belted/unbelted undergarments without sides</b> are covered for</p>

	<p>individuals age three or older if both of the following applies:</p> <ul style="list-style-type: none"><li>▪ A medical condition resulting in incontinence and there is no response to a bowel/bladder training program.</li><li>▪ The medical condition being treated results in incontinence, and beneficiary would not benefit from or has failed a bowel/bladder training program.</li></ul> <p><b>Pull-on briefs</b> 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:</p> <ul style="list-style-type: none"><li>▪ The beneficiary would not benefit from a bowel/bladder program but has the cognitive ability to independently care for his/her toileting needs, or</li><li>▪ The beneficiary is actively participating and demonstrating definitive progress in a bowel/bladder program.</li></ul> <p><b>Pull-on briefs</b> 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.</p>
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	<p>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.</p> <p><b>Incontinent wipes</b> are covered when necessary to maintain cleanliness outside of the home.</p> <p><b>Disposable underpads</b> are covered for beneficiaries of all ages with a medical condition resulting in incontinence.</p>
<p><b>Standards of Coverage (Applicable to All Programs)</b></p>	<p><b>Intermittent catheters</b> are covered when catheterization is required due to severe bladder dysfunction.</p> <p><b>Hydrophilic-coated intermittent catheters</b> are considered for individuals that have Mitrofanoff stomas, partial stricture or small, tortuous urethras.</p> <p><b>Intermittent catheters with insertion supplies</b> are covered for beneficiaries who have a chronic urinary dysfunction for which sterile technique is clinically required.</p>
<p><b>Documentation</b></p>	<p>Documentation must be less than 30 days old and include the following:</p> <ul style="list-style-type: none"> <li>▪ Diagnosis of condition causing incontinence (primary and secondary diagnosis).</li> <li>▪ Item to be dispensed.</li> <li>▪ Duration of need.</li> </ul>

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	<ul style="list-style-type: none"><li>▪ Quantity of item and anticipated frequency the item requires replacement.</li><li>▪ For pull-on briefs, a six-month reassessment is required.</li></ul>
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*MPM, April 1, 2015 version*  
*Medical Supplier Chapter, pages 46-47*

Here, the Department's witness testified that Appellant's request for pull-on briefs was denied pursuant to the above policy. Specifically, she stated that, while pull-on briefs are a short-term transitional product and it is required that a beneficiary under the age of twenty be actively participating and demonstrating definitive progress in a bowel/bladder program, Appellant has been using pull-on briefs since 2009 and is still requesting the same amount of product as she did in [REDACTED]. According to the Department's witness, the definitive progress required by policy should be reflected by the beneficiary requesting fewer briefs over time.

In response, Appellant's father testified that he does not remember Appellant be continually approved for pull-on briefs between [REDACTED] and [REDACTED] but that, regardless of what was approved by the Department, the family began purchasing pull-on briefs for Appellant so she continue trying and not lose the progress she had made. Appellant's father also testified that everyone knows it is going to take time for Appellant to become independent and that, given the past denials by the Department, they were requesting the maximum amount of pull-on briefs allowed so that they would have extras if Appellant was denied again.

Appellant's mother also testified that the amount of pull-on briefs used by Appellant during a day varies and that they were therefore requesting the same amount as before.

Appellant's supports coordinator further testified that Appellant is receiving Community Living Supports through the CMH in order to assist Appellant with toilet training and that those workers complete daily notes documenting Appellant's progress.

Appellant has the burden of proving by a preponderance of the evidence that the Department erred in denying the request for pull-on briefs.

Given the record in this case, Appellant has failed to meet her burden of proof and the Department's decision must be affirmed. While Appellant's family and the school both report improvement in Appellant's bowel/bladder program over time, the evidence does not reflect the definitive progress required by policy as any improvement has only taken place after years of using pull-on briefs, which are considered to be a transitional short-term product under policy, and Appellant continues to request the same amount of

briefs that she was did back in [REDACTED]. As noted by the Department's witness, the definitive progress required by policy should be reflected by the beneficiary requesting fewer pull-on briefs over time and that has not occurred in this case. Moreover, to the extent Appellant's representative now claims that Appellant is using fewer pull-on briefs and that they were simply requesting extra in case they are denied again, that argument must be rejected as it is unsupported by the request itself and the Department's decision must be reviewed in light of the information available to it at the time the decision was made.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds 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*

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Steven Kibit  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]

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.