



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

MIKE ZIMMER  
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]  
MAHS Docket No.: 15-023415  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Janice Spodarek**

### **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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on [REDACTED]. [REDACTED], Petitioner's parent and legal guardian, appeared and testified on Petitioner's behalf.

[REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Respondent). [REDACTED] Contract Manager of the [REDACTED] [REDACTED], testified as a witness for the Respondent.

### **ISSUE**

Did the Respondent properly deny Petitioner'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. Petitioner is a [REDACTED] year-old female Medicaid beneficiary whose date of birth is [REDACTED]. Petitioner has been diagnosed with Mental Retardation, Cerebral Palsy, Microcephaly, Angelman's Syndrome Incontinent of B/B Seizure. (Exhibit A.8).
2. In approximately [REDACTED], Petitioner first received pull-on briefs through the Respondent consisting of 4-5 briefs per day. (Exhibit A.22; Testimony).

3. Respondent's notes of [REDACTED] and [REDACTED] state in part that "P-O's denied; re-submit when progress is being made." (Exhibit A.20; Testimony).
4. A [REDACTED] nursing assessment note by Respondent indicates that Petitioner's level of incontinence is heavy; Petitioner has daily changes in bowel movements rated at 4; that client does not get up overnight to use the toilet; that on a scale of 0-10, in an average day, Petitioner voids in the toilet without wetting her diapers 0 times. (Exhibit A.11-13).
5. On or about [REDACTED] the supply company reconsidered a request for pull-ons and made the following notes: Petitioner's Incontinence rating went from Heavy to Medium; that she improved with daily changes/bowel movements; that Petitioner went from getting up in the night 0 to 3 times; that Petitioner voids in the toilet without wetting herself first on a 0-10 scale going from 4 to 4-5 (Exhibit A.7-10; Testimony).
6. On or about [REDACTED], Petitioner's teacher wrote a letter indicating that Petitioner has made minimal to no progress with regard to being toilet trained, that she "currently needs and wears pull ups," and is able to sit on the toilet. (Exhibit A.7).
7. An [REDACTED] progress note indicates that Petitioner's therapy is working with Petitioner to get diapers on and off and want to work with pull-ons (Exhibit A.)
8. On [REDACTED], the Respondent sent Petitioner an Adequate Action Notice that the request for pull-on briefs was denied as the information provided did not support coverage. (Exhibit A.5).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter stating in part that Petitioner needs the pull ups to help her develop more independence. Due to her disability, she can't do personal care, such as dressing but the pull ups give her the freedom of going to the bathroom alone and with pride. (Exhibit A.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 statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The specific 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 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</li> </ul>

	<p>would not benefit from or has failed a bowel/bladder training program.</p> <p><u><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:</u></p> <ul style="list-style-type: none"><li>▪ <u>The beneficiary would not benefit from a bowel/bladder program but has the cognitive ability to independently care for his/her toileting needs, or</u></li><li>▪ <u>The beneficiary is actively participating and demonstrating definitive progress in a bowel/bladder program.</u></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> <p><u>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.</u> 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</p>
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	<p>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> <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>

*MPM, October 1, 2015 version  
Medical Supplier Chapter, pages 49-50  
(Emphasis added)*

Here, Respondent asserts that the denial of Petitioner's request for pull-on briefs was based on the above policy, but the notice of denial sent in this case did not identify any specific basis for the denial and, instead, merely stated that the information provided did not support coverage. The denial lacks specificity.

While Respondent's evidence states at one point that a physician's assessment would be required along with a teacher's assessment before approving pull ons, only the teacher's statement was included in the evidentiary packet. The [REDACTED] letter which appears to be between [REDACTED] personal by the name of [REDACTED] to a [REDACTED] that does not appear to have been sent to Petitioner, states: "Reviewed with [REDACTED]. Per teacher letter [REDACTED] is having minimal to no progress with toilet training. Medicaid policy requires definitive progress for coverage of pull-ons ..." (Exhibit A.6). The physician who purportedly made this decision was not present at the administrative hearing for testimony and/or cross-examination.

Petitioner's representative testified that Petitioner's progress must be assessed by the diagnoses here of multiple impairments, that Petitioner is making progress, and that the pull-ons help her with her training and dignity.

Petitioner bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying her prior authorization request.

Based on the evidence in this case, Petitioner has met that burden of proof and the Respondent's denial must be reversed. First, the Respondent failed to give Petitioner the specific reasons for the denial as required by federal and state law, as well as policy, impairing Petitioner's due process opportunity to adequately prepare for the administrative hearing. There is an exhibit page in the evidentiary packet that is a bit more specific, found on page 6. However, it appears that it is an internal communication with the medical supply company and the Department, and, was not sent to Petitioner at the time of the denial. In addition, the failure to bring for the physician who purportedly made the decision impairs the Petitioner's right to examine the evidence used in making the denial, and cross-examine that witness.

The above policy provides that pull-on briefs are covered for someone of Petitioner's age when there is the presence of a medical condition causing bowel/bladder incontinence and the beneficiary is actively participating and demonstrating definitive progress in a bowel/bladder program. Here, it is undisputed that Petitioner has a covered medical condition. In addition, the record also demonstrates her definitive progress. While the Respondent focused on the teachers letter found at Exhibit A.7, wherein it states in part: "...student made minimal to no progress with regard to being toilet trained," it fails to include the information that the teacher also wrote that specifically that Petitioner "Currently needs and wears pull ups; she is still in need of pull ups." (Exhibit A.7).

Moreover importantly, a review of the evidence submitted with regards to the most recent, and, the most previous assessment clearly shows progress being made with the training program. Specifically, Petitioner's incontinence has gone from heavy to medium; Petitioner now gets up during the night to use the toilet approximately 3 times (previously 0); that and that petitioner voids without wetting herself now 4 times day when previously it was 0. In addition, Petitioner's teacher's overall opinion and recommendation can only be taken as support for pull ups. Contrary to the supply company's statement on its internal communication, this ALJ finds that the evidence supports that Petitioner is in fact making progress with "toilet training," as required by the MPM.

As discussed above, the review reflects definitive and consistent progress in this case. Additionally, even with that improvement, Petitioner is not fully trained and there is still room for improvement.

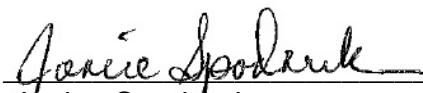
Given the record in this case however, the finding that no progress has been made is premature and Petitioner has met her burden of proving that the Respondent erred.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Respondent improperly denied Petitioner's prior authorization request for pull-on briefs.

### **IT IS THEREFORE ORDERED THAT:**

The Respondent's decision is **REVERSED** and it must initiate an approval of Petitioner's request for pull-on briefs.



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Janice Spodarek  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Respondent of  
Health and Human Services

JS/cg

cc:



**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139