IN THE MATTER OF:

████████████ ,

       Appellant

_____/

Docket No.   15-022267 PA
Case No.   ████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████████. Appellant appeared and testified. █████████, Appeals Review Officer, and █████████, Medicaid Utilization Analyst, represented the Michigan Department of Health and Human Services (the Department or MDHHS or Respondent).

Respondent's Exhibit A pages 1-11 were admitted as evidence.

ISSUE

      Did the Department properly deny Appellant's prior authorization (PA) request for pull on style adult diapers?

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 Medicaid beneficiary.

2.   Appellant has multiple sclerosis.

3.   On ██████████████, the Department received a Prior Authorization request from Appellant's physician for Pull on – style adult diapers.

4.   On ██████████████, the Department sent Appellant an Adequate Negative Action Notice stating that the request for the pull on- adult style diapers would be denied. (State's Exhibit A page 5)

5.   On ██████████████, the Michigan Administrative Hearing System

(MAHS) received Appellant's Request for Hearing. (State'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.

1.10 PRIOR AUTHORIZATION

Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services. . . .

Medicaid Provider Manual, (MPM)
Practitioner, April 1, 2014, page 4.

The Medicaid Provider Manual, Medical Supplier Section 2.19, pages 49-50 (October 1, 2015 revised January 1, 2016) states that 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 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

Appellant testified that the pull ups work best. The diapers that she was sent do not fit properly and are way too big. She does use the toilet to have a bowel movement and sometimes is able to urinate in the toilet. However, she goes to the bathroom every two hours and needs help. Appellant stated that she has used pull ups for years and they work well.
The Department representative stated that upon researching the issue it was determined that Appellant cannot manage her hygiene below the waist and is considered maximum care for all toileting. She has Home Help Services care coming to her home four times per day to change her diapers. She has a stand/sit machine for

changing. Diapers and booster pads are approved for Appellant. Appellant should contact the supplier to work with them for better fitting diapers.

Administrative Law Judge has limited jurisdiction over Medicaid fair hearings pursuant to a written directive signed by the Department of Health and Human Services (formerly Department of Community Health) Director James K. Haverman, on February 22, 2013. The written directive states:

> Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

This Administrative Law Judge has no equity powers and cannot make a decision in contravention of Department policy. Appellant has not demonstrated definitive progress in a bowel/bladder program and has not been diagnosed with a medical condition resulting in incontinence.

Appellant has failed to satisfy the burden of proving by a preponderance of the evidence that the Department improperly denied the pull on adult style underwear. The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when I determined that Appellant was not eligible for coverage for pull-on briefs. The department's decision must be upheld.
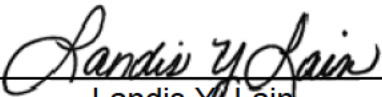
DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

cc:

LYL/

Date Mailed: <u>February 11, 2016</u>