

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909  
(517) 373-0722; Fax: (517) 373-4147

**IN THE MATTER OF:**

**MAHS Docket No. 15-021144 PA**

██████████

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██████████

Appellant.

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**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's father and legal guardian, appeared and testified on Appellant's behalf. ██████████ 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 ██████████ year-old Medicaid beneficiary who has been diagnosed with Angelman Syndrome and is noted as being severely, multiply impaired. (Exhibit A, page 8).
2. In approximately ██████████, Appellant first received pull-on briefs through the Department. (Testimony of Department's witness).
3. At that time, she was approved for ██████████ briefs per day and it was noted that Appellant's caregivers take her to the bathroom at regular intervals, but that Appellant does not indicate a need to go; she is not dry overnight; she has 40% of her bowel movements in the toilet; and is rated a 3 out of 10 on a scale measuring her ability to void in the toilet without wetting herself first. (Exhibit A, pages 17-19).

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4. The approval was for █████ months. (Exhibit A, page 18).
5. In ██████████ Appellant was again approved for five briefs per day and it was noted that Appellant was having more success toilet training and they are working on having her communicate her needs, but she is not dry overnight; has 80% of her bowel movements in the toilet; and is rated a 8 out of 10 on a scale measuring her ability to void in the toilet without wetting herself first. (Exhibit 14-16).
6. That second approval was for six months. (Exhibit A, page 15).
7. In ██████████ Appellant was again approved for five briefs per day and it was noted that Appellant has started to occasionally walk to the bathroom as a sign she needs to use the toilet, but is not dry overnight; has 75% of her bowel movements in the toilet; and is rated a 8 out of 10 on a scale measuring her ability to void in the toilet without wetting herself first. (Exhibit 11-13).
8. That third approval was again for █████ months. (Exhibit A, page 12).
9. In ██████████, Appellant's guardian requested another approval of pull-on briefs. (Exhibit A, pages 8-10).
10. Specifically, the request was for 4-5 pull-on briefs per day. (Exhibit A, page 8).
11. The review of the request also noted that Appellant is on a timed schedule and is having 95% success with urine and 100% success with bowel movements during the day, and that Appellant will also initiate toileting at times each day by walking to the bathroom. (Exhibit A, page 9).
12. It was also noted that Appellant is rated a 9 out of 10 on a scale measuring her ability to void in the toilet without wetting herself first, but that she is not dry overnight. (Exhibit 10).
13. A letter from a special education teacher at Appellant's school was submitted along with the request and it likewise noted that Appellant is indicating the need for toileting on a regular basis, by walking toward the bathroom, and will respond to scheduled questions from caregivers regarding a need to use the bathroom with 80% accuracy. (Exhibit A, page 7).
14. The letter also stated that Appellant makes it to the toilet with a dry pull 95% of the time and that it is very rare, *i.e.* less than one time per school year, for Appellant to have an accident involving a bowel movement. (Exhibit A, page 7).

15. On [REDACTED], a doctor with the Department reviewed the request and determined that it should be denied on the basis that it appeared Appellant had reached her potential and is essentially toilet trained during the day with some night-time incontinence. (Exhibit A, page 6).
16. The doctor also noted that pull-on briefs are a transitional product used for training purposes and are not intended for long term use. (Exhibit A, page 6).
17. On [REDACTED], the Department sent Appellant written notice that the request for pull-on briefs was denied as the information provided did not support coverage. (Exhibit A, page 5).
18. On [REDACTED], 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 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**

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

	<p><u>progress in a bowel/bladder program.</u></p> <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 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</p>

	technique is clinically required.
<b>Documentation</b>	<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, the Department asserts that the denial of Appellant’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 Department did provide a report of a review with a doctor where the doctor determined that the request should be denied on the basis that it appeared Appellant had reached her potential and is essentially toilet trained during the day with some night-time incontinence. The Department’s witness also testified that, given the length of time Appellant has been receiving pull-on briefs and the fact that she has still continued to require the same amount of briefs per day, Appellant was not making the definitive progress required by policy.

In response, Appellant’s representative testified that Appellant’s progress was delayed because she underwent several major surgeries over the years, but that Appellant is improving. He also testified that he does not believe Appellant has met her full potential yet.

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

Based on the evidence in this case, Appellant has met that burden of proof and the Department’s denial must be reversed. The above policy provides that pull-on briefs are covered for someone of Appellant’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 Appellant has a covered medical condition and the record also demonstrates her definitive progress over the years. While Appellant is still requesting the same amount of pull-on briefs, the various reviews clearly demonstrate significant improvement in Appellant's ability to communicate her need to use the bathroom, by walking toward it, and in her success rate in responding to questions from her caregivers and using the bathroom. Moreover, even the Department's physician reviewer appears to acknowledge the improvement as she concluded that Appellant is essentially toilet trained, which would not have been possible without significant and definitive progress from Appellant.


To the extent the Department also argues that Appellant has reached her full potential and is essentially toilet trained during the day with some night-time incontinence, its argument is unpersuasive. As discussed above, the reviews reflect definitive and consistent progress in this case and that Appellant has never plateaued. Additionally, even with that improvement, Appellant is not fully trained and there is still room for improvement as Appellant does not always initiate the trips to the bathroom or accurately respond to scheduled questions regarding her needs. The Department's witness appears to believe that Appellant will not improve any more, but that belief is purely speculative and a premature basis for denying Appellant's request given Appellant's consistent improvement up to this point. If Appellant fails to show any progress during her next review, then the Department may be justified in finding that she has reached her potential and is no longer making the required definitive progress. Given the record in this case however, its findings are premature and Appellant has met her burden of proving that the Department erred.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED THAT:**

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



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Steven Kibit  
Administrative Law Judge  
for Nick Lyon, Director

Michigan Department of Health and Human Services

Date Mailed: ██████████

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SK/db

cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[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.