



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.: 16-000571
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 mother and legal guardian, appeared and testified on Petitioner's behalf. [REDACTED], Petitioner's father, appeared as a witness on behalf of Petitioner.

[REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Respondent). [REDACTED], Contract Manager of the diaper and Incontinence supply Program, 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] male Medicaid beneficiary who has been diagnosed with Autism. (Exhibit A, page 5).

2. In approximately [REDACTED], Petitioner first received pull-on briefs through the Respondent consisting of 5 briefs per day. (Testimony of Respondent's witness).
3. Respondent's notes of [REDACTED] state in part that school participates in toileting program; at home timer set for 60 minutes, when timer rings they go to the bathroom; client can pull pants up/down, remove and change briefs, does not initiate toileting; has 80% success with urine and 10%; using 4-6 per day briefs. (Exhibit A, page 15).
4. A [REDACTED] update by the Respondent states in part that in discussion with teacher it was indicated that Respondent sent the wrong size briefs. (Exhibit A, page 12).
5. A [REDACTED] letter from Petitioner's teacher states in part that the Petitioner is currently participating in the toilet training program. Petitioner has "made significant gains, though slowly, they are gains. Petitioner will go into the restroom with verbal prompting, pull up and pull down his own pants independently, will sit and void into the toilet on a time schedule but continues to urinate in his brief, needs to be able to wear the brief in place of diapers in order to maintain the independence he had already achieved, has had success with voiding and sometimes BM on the toilet with the verbal prompts, success with BM. (Exhibit A, pages 9-10).
6. On [REDACTED], [REDACTED], subcontractor of Respondent's entered a comment in this case that states in part that it reviewed Petitioner's file with a [REDACTED] The Respondent' witness testified that [REDACTED] concluded that Petitioner has been receiving the same amount of product since [REDACTED] and per teacher, has not had consistent success: "Medicaid policy requires definitive progress for continuation. If success begins to be made, resubmit for consideration." (Exhibit A, page 8).
7. The Respondent's physician did not appear at the administrative hearing and was not available for examination or cross-examination.
8. On [REDACTED], the Respondent sent Petitioner written notice that the request for pull-on briefs was denied as the information provided did not support coverage. (Exhibit A, page 7).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter stating in part that Petitioner has made progress and many gains over the years; is now able to perform the process of urination, including pulling his pants and diaper up and down, urinating, flushing the toilet, and washing his hands, uses verbal and visual cueing to help, and while his gains are not large, they are still gains in consideration of his diagnosis. (Exhibit A, page 5).

10. Petitioner's request for a hearing states in part that Petitioner's guardian was informed by [REDACTED] of the following statement by [REDACTED] "to be eligible to receive the briefs, members must either have the cognitive ability to independently care for their toileting needs or be actively participating and demonstrating definitive progress in a bowel or bladder program." (Exhibit A, page 5). The source of this quote was not included in the evidentiary packet.
11. The Respondent's witness testified that medical necessity is not met based on the number of diapers used. (Testimony).

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

Definition	<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">▪ Independent care of bodily functions through proper toilet training.▪ Appropriate self-catheter care to decrease risk of urinary infections and/or avoid bladder distention.
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	<ul style="list-style-type: none"> ▪ Proper techniques related to routine bowel evacuation.
<p>Standards of Coverage (Not Applicable to CSHCS Only Beneficiaries)</p>	<p>Diapers, incontinent pants, liners, and belted/unbelted undergarments without sides are covered for individuals age three or older if both of the following applies:</p> <ul style="list-style-type: none"> ▪ 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. <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"> ▪ <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> ▪ <u><i>The beneficiary is actively participating and demonstrating definitive progress in a bowel/bladder program.</i></u> <p>Pull-on briefs are covered for beneficiaries age 21 and over when there is the presence of a medical</p>

	<p>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><i>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.</i></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>Incontinent wipes are covered when necessary to maintain cleanliness outside of the home.</p> <p>Disposable underpads are covered for beneficiaries of all ages with a medical condition resulting in incontinence.</p>
<p>Standards of Coverage (Applicable to All Programs)</p>	<p>Intermittent catheters are covered when catheterization is required due to severe bladder dysfunction. Hydrophilic-coated intermittent catheters are considered for individuals that have Mitrofanoff stomas, partial stricture or small, tortuous urethras.</p> <p>Intermittent catheters with insertion supplies are covered for beneficiaries who have a chronic urinary dysfunction for which sterile technique is clinically required.</p>
<p>Documentation</p>	<p>Documentation must be less than 30 days old and include the following:</p> <ul style="list-style-type: none"> ▪ Diagnosis of condition causing incontinence (primary and secondary diagnosis).

	<ul style="list-style-type: none">▪ Item to be dispensed.▪ Duration of need.▪ Quantity of item and anticipated frequency the item requires replacement.▪ For pull-on briefs, a six-month reassessment is required.
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*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 Respondent did provide a report of a review by a [REDACTED] where the doctor determined that the request should be denied on the basis that it appeared Petitioner was not progressing based on the letter from Petitioner's teacher. It is noted that the physician who purportedly made this decision was not present at the administrative hearing for testimony and/or cross-examination. However, the Respondent's witness testified that the physician's decision was made in conjunction with the witness. Moreover, the witness testified that medical necessity was not met based on a quantitative factor - the number of briefs. That is, Petitioner was using approximately 5 briefs when initially approved in [REDACTED], and was continuing to use 5 at review six months later-in [REDACTED].

In response, Petitioner's representative testified that the letter from the [REDACTED] does not say that Petitioner was not progressing, but in fact states: "...[Petition] has made significant gains, though slowly, they are gains...He is also still working on the BM portion of the toilet training, which developmentally comes later..." (Exhibit A.6). The [REDACTED] letter clearly states that Petitioner has made gains. Petitioner bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying his 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. The facts here support that Petitioner meets the policy that requires 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 and the record also demonstrates his definitive progress over the years. While Petitioner is still requesting the same amount of pull-on briefs, the facts clearly demonstrate significant improvement in Petitioner's ability to communicate his need to use the bathroom, by walking toward it, and in his success rate in responding to questions from his caregivers and using the bathroom.

As discussed above, the review reflects definitive and consistent progress in this case and Petitioner has never plateaued. Additionally, even with that improvement, Petitioner is not fully trained and there is still room for improvement. Moreover, Respondent's characterization of medical necessity as a quantitative factor is not a measure identified in the MPM as a measure. Additionally, recent policy analysts for the MSA have cautioned against using a quantitative calculation in assessing medical necessity.

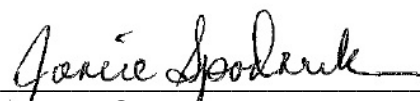
Given the record in this case however, the finding that no more progress has been made is premature and Petitioner has met his burden of proving that the Respondent erred.

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.



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

JS/cg

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

Agency Representative

[REDACTED]

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]