



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 14, 2016
MAHS Docket No.: 16-005491
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. Petitioner did not appear. Petitioner's mother [REDACTED] appeared on behalf of the Petitioner. Mary Carrier, Appeals Review Officer and [REDACTED], Contract Manager represented the Department of Health and Human Services (Department or State).

State's Exhibit A pages 1-13 were admitted as evidence.

ISSUE

Did the Department properly deny Petitioner's request for prior authorization?

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 Medicaid beneficiary, date of birth [REDACTED].
2. Petitioner has been diagnosed with mini-strokes, has trouble walking or using her right arm. She is incontinent and non-verbal.
3. On [REDACTED], the Department received a Prior Authorization request from Petitioner's physician for Pull on – style adult diapers.
4. On [REDACTED], [REDACTED], the contractor for the State of Michigan Diaper and incontinence Supply Program, sent Petitioner an Advance Negative Action Notice stating that the request for the pull on-

adult style diapers would be denied effective [REDACTED]. (State's Exhibit A page 7)

5. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Petitioner'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.

The Department Representative stated that upon researching the issue it was determined that Petitioner cannot manage her hygiene below the waist and is considered maximum care for all toileting. Pull ups are considered to be a temporary benefit.

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. Petitioner has not demonstrated definitive progress in a bowel/bladder program and has not been diagnosed with a medical condition resulting in incontinence. The Department Representative testified on the record that the pull-ups were denied because Petitioner requires maximum assistance with incontinence supplies. Petitioner was approved for diapers and other accessories in accordance with Medicaid policy. Petitioner's Representative testified that the diapers work properly.

Petitioner 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 it determined that Petitioner 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 Petitioner's request for PA for pull-on briefs.

IT IS THEREFORE ORDERED that:

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

LL ■



Randis Lain

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

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

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]