



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 22, 2017
MAHS Docket No.: 17-000147
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 a request for a hearing filed on the minor Petitioner's behalf.

After due notice, a telephone hearing was held on February 23, 2017. [REDACTED], Petitioner's mother, appeared and testified on Petitioner's behalf. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). [REDACTED] [REDACTED], Contract Manager with the Department's Diaper and Incontinence Program, testified as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's prior authorization 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 ten-year-old male who has been diagnosed with autism, a developmental delay, and incontinence of bladder and bowel. (Exhibit A, page 10).
2. He is also non-verbal and communicates with pictures. (Exhibit A, page 10).

3. Petitioner has been receiving incontinence supplies, including diapers and pull-ons at various times, through the Department since at least October of 2012. (Exhibit A, page 20).
4. In April of 2013, Petitioner was approved for pull-ons for six months. (Exhibit A, page 20).
5. In October of 2013, the Department denied reauthorization of pull-ons and indicated that Petitioner was to be switched back to diapers if incontinence supplies were still necessary. (Exhibit A, page 20).
6. On April 17, 2015, Petitioner's representative requested pull-ons, but the request was denied and diapers were again approved on May 5, 2015 because the teacher's letter submitted along with that request showed less success than in a previous letter. (Exhibit A, page 14).
7. On November 1, 2016, Petitioner's representative again requested pull-ons on Petitioner's behalf. (Exhibit A, pages 10-11).
8. During an assessment with a nurse from [REDACTED] with respect to that request, Petitioner's representative reported that Petitioner is on a toilet training program at home and school, and that, while she is unsure of the success Petitioner is having at school, at home Petitioner is toileted in the morning, after school, after meals, and before bed; he is prompted to use the bathroom; he has daily bowel movements and has made a bowel movement in the toilet monthly; and he will make urine in the toilet daily. (Exhibit A, page 10).
9. She also reported that Petitioner wakes up in the morning dry and that she rates his overall training success as a four out of ten. (Exhibit A, page 11).
10. Regarding the school, Petitioner's representative reported that, while she is unsure of the success Petitioner is having at school, he is changed from a diaper to underwear when he arrives and is toileted every hour. (Exhibit A, page 11).
11. The nurse from [REDACTED] then advised Petitioner's representative that another teacher's letter would be needed to submit to the Department. (Exhibit A, page 11).
12. In the subsequent teacher's letter, dated November 17, 2016, Petitioner's teacher wrote:

[Petitioner] has been a student in my class since the beginning of the 2015 school year. He is toileted 3x/day upon arrival, at lunch, and

at dismissal. He has only urinated in the toilet 3x since he has been in this classroom. Last school year he had 2 wet accidents. This school year he had had 1 wet accident and 1 BM accident.

When he arrives in school he is wearing a diaper or pull up. The diaper or pull up comes off and he wears underwear all day at school. It is rare for him to have an accident. Most days he is [sic] remains dry all day long. When he is toileted for the last time of the school day, we put the diaper back on.

He has not ever initiated toileting. He does have a picture of the bathroom on his desk for him to initiate if he chooses to. We use this visual cue to get him into the bathroom each time. He is able to verbally ask for help to pull his pants and underwear down. He is also able to remove his diaper and put it in the garbage. He does not wipe himself. Again, depending on his motivation that day and time, he is able to pull up his pants and underwear. He is not able to button his pants. He is not able to put on his own diaper.

We continue to work on toileting for [Petitioner] daily.

Please contact me if you have any questions or concerns.

Exhibit A, page 7

13. The Department's witness then reviewed the prior authorization request with a Dr. Donovan and they determined that the request should be denied as it appeared from the teacher's letter that Petitioner is toilet-trained and pull-ons are being used "just in case". (Exhibit A, page 8; Testimony of Department's witness).
14. On December 1, 2016, the Department sent Petitioner written notice that the request for incontinence supplies was denied because the information provided did not support coverage. (Exhibit A, page 6).

15. On January 12, 2017, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter regarding that denial. (Exhibit A, pages 5-7).

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 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 [CHANGE MADE 7/1/16]

<p>Definition</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"> ▪ Independent care of bodily functions through proper toilet training. ▪ Appropriate self-catheter care to decrease risk of urinary infections and/or avoid bladder distention. ▪ 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</p>

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 3 through 20 when there is the presence of a medical condition causing bowel/bladder incontinence, and one of the following applies:

- The beneficiary would not benefit from a bowel/bladder program but has the cognitive ability to independently care for his/her toileting needs, or
- The beneficiary is actively participating and demonstrating definitive progress in a bowel/bladder program.

Pull-on briefs 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>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. Pull-on briefs covered as a long-term item require a reassessment once a year or less frequently as determined by MDHHS. 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.</p> <p>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, 2016 version
Medical Supplier Chapter, pages 49-50
(Underline added for emphasis)*

Here, the Department denied Petitioner's prior authorization request for pull-on briefs pursuant to the above policies.

In support of that decision, the Department's witness testified that it appeared from Petitioner's teacher's letter that Petitioner is toilet-trained and that the pull-ons are being used just in case of emergencies, which is not a covered use. In particular, she noted that Petitioner has had minimal accidents over the past couple years while wearing underwear at school. She further testified that Petitioner's representative can re-request supplies and suggests that, if she does so, she include letters from both Petitioner's teacher and his physician.

In response, Petitioner's representative testified that, while Petitioner is making some progress, Petitioner is not toilet-trained and it only appears that he is because he holds it in all day while in his underwear at school. She also testified that Petitioner arrives at school wet; does not toilet at school despite being taken toileting every hour; and arrives home wet. Petitioner's representative further testified that the teacher is very upset as to how the letter is being taken.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying the request for pull-on briefs. Moreover, the undersigned Administrative Law Judge reviews the Department's decision in light of the information that was available at the time the decision was made.

Given the available evidence and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet his burden of proof and the Department's decision must therefore be affirmed. While the evidence submitted along with the prior authorization is not conclusive, especially given that Petitioner rarely uses the bathroom at school, it does suggest that Petitioner is toilet-trained, and that the requested pull-on briefs are not needed, as Petitioner wears underwear all day at school with only rare accidents. Moreover, while Petitioner's representative asserts that the

teacher's letter is being misconstrued and that the teacher is upset about how the letter is being taken, any claims about what the teacher meant to say in the letter is both hearsay and unsupported, especially as the teacher never wrote a follow-up letter clarifying any statements, and the undersigned Administrative Law Judge does not find them to be persuasive. Accordingly, based on what the Department received, its decision was proper.

To the extent that Petitioner's has new or updated information she wants to provide, she and is free to submit a new prior authorization request at any time along with that information. However, with respect to the decision at issue in this case, Petitioner has failed to show that the Department erred based on the information available at the time and the Department's decision must therefore be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's prior authorization request for pull-on briefs.

IT IS, THEREFORE, ORDERED that:

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

SK/tm



Steven Kibit
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

DHHS Department Rep.

[REDACTED]
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