

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In re CMS LCD Complaint:

Posterior Tibial Nerve Stimulation (PTNS) (L28457),

Docket Nos. C-13-60 and C-13-580

ALJ Ruling No. 2013-12

Date: June 20, 2013

DISMISSAL

Pursuant to 42 C.F.R. § 426.420, I dismiss the complaints filed in these matters.

The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program (Social Security Act (Act) §§ 1102, 1871, 1874) with the assistance of Medicare contractors, who act on its behalf in determining and making payments to providers and suppliers of Medicare items and services. Act §§ 1816, 1842. Medicare covers items and services only if they are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body part. Act § 1862(a)(1)(A). To this end, Medicare contractors issue written determinations, called local coverage determinations (LCDs), addressing whether, on a contractor-wide basis, a particular item or service is covered. Act § 1869(f)(2)(B); *see also* 42 C.F.R. § 400.202. A Medicare beneficiary who, based on an LCD, has been denied coverage for an item or service may challenge that LCD before an administrative law judge. Act § 1869(f)(2); 42 C.F.R. Part 426.

In these cases, aggrieved Medicare beneficiaries (aggrieved parties) challenged LCD L28457, issued by the Medicare contractor, Wisconsin Physicians Service Insurance Corporation. When the aggrieved parties filed, LCD 28457 precluded Medicare reimbursement for a procedure called Posterior Tibial Nerve Stimulation (PTNS).

