

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In re CMS LCD COMPLAINT:
Transcutaneous Electrical Nerve Stimulator
(LCD No. L33802)

Docket No. C-17-218

Decision No. CR4798

Date: February 24, 2017

DECISION DISMISSING CASE

Georgia Rymer (Aggrieved Party) submitted correspondence dated December 13, 2016, which the Civil Remedies Division (CRD) docketed as a Local Coverage Determination (LCD) appeal. Under 42 C.F.R. § 426.410(b), I am required to determine if an LCD complaint is “acceptable,” including whether it is “valid” under 42 C.F.R. § 426.400.

After reviewing the Aggrieved Party’s filing, I concluded that it was not an acceptable and valid LCD complaint. I notified the Aggrieved Party of this conclusion in a January 10, 2017. The Order stated:

[T]he complaint is missing information necessary to constitute a valid complaint. The complaint is missing Ms. Rymer’s telephone number and e-mail address. The complaint is also missing clinical or scientific evidence that shows the LCD is unreasonable, and the Aggrieved Party’s statement does not explain why she believes the provisions of the LCD are not valid under the reasonableness standard. Further the complaint does not list the name of the contractor using the LCD or the specific provision (or provisions) of the LCD adversely affecting the aggrieved party.

Therefore, the Aggrieved Party has one opportunity to amend her complaint pursuant to the relevant regulation. 42 C.F.R. § 426.410(c)(1). If she does not submit an acceptable amended complaint, then I must issue a decision dismissing the unacceptable complaint. 42 C.F.R. § 426.410(c)(2).

The Aggrieved Party must submit a valid amended complaint **within 30 days of the date of this Order** that contains the following:

- *LCD-identifying information:* (i) the name of the contractor using the LCD; (ii) Title of the LCD being challenged; (ii) The specific provision of the LCD adversely affecting the aggrieved party.
- *Aggrieved Party statement:* A statement from the Aggrieved Party explaining what service is needed and why the Aggrieved Party thinks that the provisions(s) of the LCD is (are) not valid under the reasonableness standard.
- *Clinical or scientific evidence:* Copies of clinical or scientific evidence that support the complaint and an explanation for why the Aggrieved Party thinks that this evidence shows that the LCD is not reasonable.
- *Aggrieved party telephone number and e-mail address, if any.* If the aggrieved party does not have an e-mail address she should affirmatively state so.

The Aggrieved Party failed to make any filing, and thus this complaint remains unacceptable within the terms of 42 C.F.R. § 426.410(b). Accordingly, I dismiss the complaint. 42 C.F.R. § 426.410(c)(2).

/s/
Scott Anderson
Administrative Law Judge