

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

*In re CMS LCD Complaint:*  
Radiofrequency Ablation

Docket No. C-17-1026

Decision No. CR4957

Date: October 19, 2017

**DECISION DISMISSING UNACCEPTABLE COMPLAINT**

Stan Swenson (Aggrieved Party) submitted correspondence dated July 16, 2017, which the Civil Remedies Division treated as a challenge to a local coverage determination (LCD); docketed as styled above, C-17-1026; and assigned to me for review.

The regulations at 42 C.F.R. § 426.410(b) require that I determine whether an aggrieved party has filed an “acceptable” and “valid” complaint. After reviewing the Aggrieved Party’s filing, I concluded that it was not an acceptable and valid LCD complaint under the applicable regulations. Therefore, in an Acknowledgment of Receipt and Order to Aggrieved Party to Amend Unacceptable Complaint (Order), dated August 22, 2017, I informed the Aggrieved Party that he had one opportunity to submit an acceptable complaint. *See* 42 C.F.R. § 426.410(c)(1).

My August 22 Order listed the information that is required to be included in an LCD complaint to make it acceptable. I specifically directed the Aggrieved Party to provide all of the following information:

- *LCD-identifying information:* The unacceptable complaint did not identify any specific LCD. I therefore directed the Aggrieved Party to provide (i) the name of the contractor using the LCD; (ii) the title of the LCD; and (iii) the specific provision of the LCD that adversely affects the Aggrieved Party.

- *Treating physician written statement:* The treating physician statement the Aggrieved Party submitted was undated. I therefore directed the Aggrieved Party to provide either the date on which the treating physician prepared the written statement or to submit a new treating physician statement that is dated.
- *Aggrieved Party statement:* The unacceptable complaint explained what service the Aggrieved Party needs, but it did not explain why the Aggrieved Party contends that the provision(s) of the LCD is (are) not valid under the reasonableness standard. I therefore directed the Aggrieved Party to submit a statement explaining his position.
- *Clinical or scientific evidence:* Finally, the Aggrieved Party did not provide copies of clinical or scientific evidence in support of his complaint. Nor did he explain why he believes that this evidence shows that the LCD is not reasonable. I therefore directed the Aggrieved Party to submit such evidence and argument.

My Order directed the Aggrieved Party to file the amended complaint within 30 days of the date of the Order. I advised the Aggrieved Party that if he did 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 failed to file a response to my August 22, 2017 Order. Therefore, for the reasons explained in that Order, the July 16, 2017 complaint submitted by the Aggrieved Party remains unacceptable under 42 C.F.R. § 426.410(b). I am required to dismiss the unacceptable complaint. 42 C.F.R. § 426.410(c)(2). Accordingly, I order that the complaint be dismissed.

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/s/  
Leslie A. Weyn  
Administrative Law Judge