

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In re CMS LCD Complaint:

Progressive Supranuclear Palsy

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) Date: May 22, 2007
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) Docket No. C-07-264

) Decision No. CR1599
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DECISION DISMISSING CASE

The February 8, 2007 complaint in this matter was filed by the Medicare beneficiary's wife and representative. The Medicare beneficiary's representative provided documentation showing that she had been given general power of attorney for her husband. In her complaint, the Medicare beneficiary's representative appeals the Local Coverage Determination (LCD) denial of a motorized lift chair recliner for her husband who has progressive supranuclear palsy.

On February 28, 2007, I directed that an Order be sent to the Medicare beneficiary's representative explaining that her letter of February 8, 2007 was not an "acceptable" complaint challenging a LCD. The February 8, 2007 letter was not acceptable because the Medicare beneficiary's representative does not identify the LCD being challenged and does not provide acceptable clinical or scientific evidence upon which I can rely to show that the challenged LCD is not valid. I informed the Medicare beneficiary's representative that she must identify the LCD by: 1) naming the contractor using the LCD; 2) the title of the LCD being challenged; and 3) specifying the specific provision (or provisions) of the LCD adversely affecting the aggrieved party. I informed the Medicare beneficiary's representative that this information was necessary, as well as a Health Insurance Claim number, if any, for her husband to be an aggrieved party, as defined by the regulations. Also, the February 8, 2007 letter did not meet the criteria set out at 42 C.F.R. §§ 426.410(b)(1) and (2), which sections in turn adopt detailed content and timeliness requirements for complaints set out in 42 C.F.R. §§ 426.400(c)(1)(v) and (vi), (c)(2)(iv), (c)(4), and (c)(6).

For the reasons explained below, I find that the complaint is not acceptable as a complaint challenging a LCD. In my February 28, 2007 Order, I directed the Medicare beneficiary's representative that the February 8, 2007 letter would have to be amended. My February 28, 2007 Order informed the Medicare beneficiary's representative what information was required in order to file an acceptable complaint to challenge an LCD. The Order also stated that, if there was no response within a reasonable time-frame, which I defined as 30 days from February 28, 2007, the regulations require that I issue a mandatory dismissal of any complaint not successfully amended. The Order stated that ". . . the ALJ [Administrative Law Judge] *must* issue a decision dismissing the unacceptable complaint." 42 C.F.R. § 426.410(c)(2) (emphasis added). I informed the Medicare beneficiary's representative that she may request one extension of time not to exceed an additional 30 days. By letter dated March 22, 2007, the Medicare beneficiary's representative requested an additional 30 days in which to amend the LCD complaint before me. I granted the extension of time. By Order dated March 29, 2007, I gave the Medicare beneficiary's representative until April 30, 2007 to submit an amended complaint in this matter. As of the date of this decision, I have received no response from the Medicare beneficiary's representative or any other person that meets the definition of an aggrieved party.

Assuming the February 8, 2007 letter intended to be an LCD complaint, it is unacceptable because the Medicare beneficiary's representative did not provide the information necessary to show that her husband qualified as an aggrieved party. Further, the February 8, 2007 letter did not contain the information specified at 42 C.F.R. §§ 426.400(c)(1)(v) and (vi), (c)(2)(iv), (c)(4), and (c)(6). I have afforded the Medicare beneficiary's representative the opportunity to amend the complaint, as required by 42 C.F.R. § 426.410(c)(1). I also granted the Medicare beneficiary's representative additional time to amend her complaint. The Medicare beneficiary's representative failed to submit an acceptable complaint within the time-frame I have established. Therefore, pursuant to 42 C.F.R. § 426.410(c)(2), I must issue a decision dismissing the complaint.

The regulations require that an ALJ's decision contain certain provisions. 42 C.F.R. § 426.450. Pursuant to 42 C.F.R. § 426.450(a), my decision must include findings. Therefore, as required by 42 C.F.R. § 426.450(a)(3), I find that the aggrieved party or his representative has failed to file an acceptable complaint challenging an LCD. Accordingly, for the reasons set forth above, I decide that this case must be dismissed.

The regulations, at 42 C.F.R. § 426.450(b), require that an ALJ's decision contain certain other information. This decision contains the information required by 42 C.F.R. § 426.450(b)(1), (2), and (6). Because I am dismissing this case for failure to file an acceptable complaint, the information required by 42 C.F.R. § 426.450(b)(3), (4), and (5)

