

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the case of:	)	
	)	Date: February 8, 2008
<i>In re</i> CMS LCD COMPLAINT:	)	
Drugs and Biologicals,	)	
Non-Chemotherapeutic (L13354)	)	Docket No. C-08-239
	)	Decision No. CR1735

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**DECISION DISMISSING LCD COMPLAINT**

An aggrieved Medicare beneficiary challenges a Local Coverage Determination (LCD), L13354, issued by the Medicare Contractor, Trailblazer Health Enterprises, LLC. For the reasons discussed below, I dismiss his complaint as untimely.

**Discussion**

*The beneficiary's complaint is unacceptable because it was not timely filed.\**

The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program (Social Security Act (Act), §§ 1102, 1871, 1874), and contracts with carriers and intermediaries (Medicare contractors) to act on its behalf in determining and making payments to providers and suppliers of Medicare items and services. Act, §§ 1816, 1842. To this end, Medicare contractors issue written determinations, called LCDs, addressing whether, on a contractor-wide basis, a particular item or service is covered. Act, § 1869(f)(2)(B). A Medicare beneficiary who has been denied coverage for an item or service based on an LCD may challenge that LCD before an Administrative Law Judge (ALJ) by timely filing an acceptable complaint. Act, § 1869(f)(2); 42 C.F.R. § 426.400. An aggrieved party who chooses to file an LCD challenge after receiving the service must file his complaint within 120 days of the initial denial notice. 42 C.F.R. § 426.400(b)(2). The ALJ may dismiss any complaint that does not meet the requirements of 42 C.F.R. § 426.400. 42 C.F.R. § 426.405(c)(2).

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\* I make this one finding of fact/conclusion of law.

In this case, the denial notice is dated June 21, 2007. The beneficiary filed his complaint more than 200 days later, on January 8, 2008. He explains the delay in filing by citing his doctor's medical condition "which prevented my obtaining his statement until recently." The regulations, however, provide no good-cause exception for untimely filing.

Moreover, even if I had the authority to make such an exception (which I do not), the beneficiary here has not established good cause. Although his physician's statement is dated October 29, 2007 (130 days after the date of the notice), he waited an additional 70 days before filing his complaint. He provides no explanation for that additional delay.

### **Conclusion**

Because the beneficiary's complaint is untimely, I dismiss it pursuant to 42 C.F.R. § 426.405(c)(2).

The beneficiary or his representative has 30 days from the date of this Decision to file an appeal with the Departmental Appeals Board, in accordance with 42 C.F.R. § 426.465.

/s/

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Carolyn Cozad Hughes  
Administrative Law Judge