

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In re LCD Complaint:
UNKNOWN

Contractor: Wisconsin Physician Services Corp

Docket No. C-17-723

Decision No. CR4912

Date: August 10, 2017

DECISION DISMISSING COMPLAINT

The Civil Remedies Division (CRD) of the Departmental Appeals Board, United States Department of Health & Human Services (HHS), received correspondence from the Aggrieved Party, dated May 3, 2017, seeking review of a local coverage determination (LCD). The correspondence, however, failed to reference the LCD in question or the Medicare Administrative Contractor who issued the questioned LCD.

Therefore, in an Order dated June 19, 2017, I acknowledged receipt of the Aggrieved Party's complaint. I explained that, pursuant to the applicable regulations, I am required to determine if the complaint is acceptable. *See* 42 C.F.R. § 426.410(b). I further explained that I must determine whether the complaint meets the requirements for a valid complaint as set forth in 42 C.F.R. § 426.400. In my June 19, 2017 Order, I informed the Aggrieved Party that I had determined that the complaint did not constitute an acceptable, valid LCD complaint as set forth in 42 C.F.R. § 426.400.

To be timely, a complaint must be filed within six months of the issuance of a written statement from an aggrieved party's treating practitioner, in the case of an aggrieved party who chooses to file an LCD challenge before receiving the service, or within 120 days of the initial denial notice in the case of an aggrieved party who chooses to file an LCD challenge after receiving the service. 42 C.F.R. § 426.400(b). The components of a valid complaint under 42 C.F.R. § 426.400(c) include the following:

1. *Beneficiary identifying information:*
 - (i) Name.
 - (ii) Mailing Address.
 - (iii) State of residence, if different from mailing address.
 - (iv) Telephone number.
 - (v) Health Insurance Claim number, if applicable.
 - (vi) Email address, if applicable.

2. *If the beneficiary has a representative*, the representative-identifying information must include the representative's name, mailing address, telephone number, email address, if any and a copy of the written authorization to represent the beneficiary.

3. *Treating Physician Written Statement.* A copy of a written statement from the treating physician that the beneficiary needs the service that is the subject of the LCD. This statement may be in the form of a written order for the service or other documentation from the beneficiary's medical record (such as progress notes or discharge summary) indicating that the beneficiary needs the service.

4. *LCD-identifying information.*
 - (i) Name of the contractor using the LCD.
 - (ii) Title of the LCD being challenged.
 - (iii) The specific provision (or provisions) of the LCD adversely affecting the aggrieved party.

5. *Aggrieved party statement.* A statement from the aggrieved party explaining what service is needed and why the aggrieved party thinks that the provision(s) of the LCD is (are) not valid under the reasonableness standard.

6. *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.

In the instant case, I have no way of knowing if the complaint was timely because no denial notice was enclosed with the complaint. Also, the complaint was missing information necessary to constitute a valid complaint: the appeal letter did not identify the LCD, the contractor using the LCD, or the specific provision or provisions adversely affecting the Aggrieved Party; nor had the Aggrieved Party included a statement from her treating physician and clinical or scientific evidence that shows the LCD is unreasonable.

In my June 19, 2017 Order, I informed the Aggrieved Party that she had one opportunity to amend her complaint, pursuant to 42 C.F.R. § 426.410(c)(1), within 30 days of the date of the Order. At that time, I cautioned the Aggrieved Party that if she did not submit an acceptable amended complaint, then I must issue a decision dismissing the unacceptable complaint pursuant to 42 C.F.R. § 426.410(c)(2).

The Aggrieved Party has not filed a response to my Order, and she has not otherwise submitted an amended complaint in compliance with my Order. As the Aggrieved Party has not submitted an acceptable complaint despite being given the opportunity to amend her complaint, I dismiss the complaint pursuant to 42 C.F.R. § 426.410(c)(2).

/s/
Scott Anderson
Administrative Law Judge