

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In re CMS LCD COMPLAINT:

Judith A. Roussel,
Continuous Positive Airway Pressure (CPAP)

Docket No. C-16-334

Decision No. CR4584

Date: April 14, 2016

DECISION DISMISSING CASE

Judith Roussel (Aggrieved Party) submitted correspondence dated February 4, 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 February 29, 2016 Order. The Order stated:

[T]he complaint is missing information necessary to constitute a valid complaint: the appeal letter does not identify the contractor using the LCD, nor the specific provision or provisions adversely affecting the Aggrieved Party; nor has the Aggrieved Party included a statement from her treating physician and clinical or scientific evidence that shows the LCD is unreasonable.

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 should submit the following:

- *Beneficiary-identifying/aggrieved party information:* (i) Name; (ii) Mailing address; (iii) State of residence, if different from mailing address; (iv) Telephone number, if any; (v) Health Insurance Claim number, if applicable; (vi) E-mail address, if applicable.
- *If the beneficiary has a representative, the representative-identifying information must include:* (i) Name; (ii) Mailing address; (iii) Telephone number; (iv) E-mail address, if any; (v) Copy of the written authorization to represent the beneficiary
- *Treating physician written statement (42 C.F.R. 426.400(c)(3)[:])* The regulations require a copy of a written statement from the treating physician that the beneficiary **needs** the service that is the subject of the LCD. The regulations specify that the statement must be from the treating physician and the statement may be in the form of a written order for the service or other documentation from the beneficiary's medical records indicating that the beneficiary needs the service.
- *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.

The amended complaint must be in writing and should be filed no later than **30 days from the date of this Order.**

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