Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In re CMS LCD Complaint:	)	Date: February 27, 2008
Noridian Administrative Services	)	
LCD L22431, Urinalysis Policy	)	Docket No. C-08-108
	)	Decision No. CR1742
	)	
	)	

DECISION DISMISSING LCD COMPLAINT

An aggrieved Medicare beneficiary (Aggrieved Party or AP) challenges a Local Coverage Determination (LCD), L22431, issued by the Medicare Contractor, Noridian Administrative Services. For the reasons discussed below, I dismiss his complaint as untimely.

Discussion

> ***The Aggrieved Party's complaint is unacceptable because it was not timely filed.***[*]

The Centers for Medicare and 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 section 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 March 15, 2007. The Aggrieved Party filed his complaint almost 240 days later, on November 8, 2007. In an Order dated December 17, 2007, I directed the Aggrieved Party and the Medicare contractor to address whether I should dismiss this appeal as untimely. The Medicare contractor has responded that it "has no additional information and supports dismissal of this appeal as untimely." The Aggrieved Party has not responded to my order and the time for response has long since passed.

The Aggrieved Party did not file his challenge to the LCD provision within 120 days of the initial denial by CMS. The regulations provide no good cause exception for untimely filing, and I have no option but to dismiss the complaint.

Conclusion.

Because his 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. 43 C.F.R. § 426.465

/s/

Carolyn Cozad Hughes
Administrative Law Judge