Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In re CMS LCD COMPLAINT: Ankle-Foot/Knee-Ankle-Foot Orthosis (L142)

Contractor: Noridian Administrative Services

Docket No. C-10-774

Decision No. CR2240

Date: September 9, 2010

DECISION DISMISSING CASE

This Local Coverage Determination (LCD) appeal is before me based on a June 4, 2010 letter filed by Felix Sigal, D.P.M., a treating physician for the Aggrieved Party. In the letter, Dr. Sigal seeks appeal of the LCD denial of continued callus debridement treatment for the Aggrieved Party for less than a 60-day treatment interval.

This appeal was docketed and originally assigned to Administrative Law Judge Alfonso J. Montaño. Judge Montaño reviewed the complaint and on July 14, 2010 issued a letter to Dr. Sigal explaining that the June 4, 2010 complaint was not an "acceptable" complaint challenging a LCD for the following reasons: its failure to provide a copy of the written authorization to represent the Aggrieved Party; failure to identify why the callus debridement was "needed" or "medically necessary"; its failure to explain why the LCD is incorrect; and its failure to provide copies of clinical or scientific evidence to support the complaint. The July 14, 2010 letter outlined for Dr. Sigal the specific information required in order to file an "acceptable" complaint to challenge an LCD, and afforded Dr. Sigal one opportunity to amend the complaint. *See* 42 C.F.R. § 426.410(b) and (c).

¹ The names of Medicare beneficiaries are not listed in published decisions in order to protect their privacy. 68 Fed. Reg. 63,691, 63,709 (2003).

On July 28, 2010, this case was reassigned to me. Shortly thereafter, the Aggrieved Party advised my office that she would represent herself in this appeal. A request for an extension of time to file an acceptable complaint was filed by the Aggrieved Party *pro se*, and by Order issued August 2, 2010, I granted her request. In support of her LCD complaint and in response to the opportunity to amend the initial filing, on August 12, 2010 the Aggrieved Party faxed a copy of a lower extremity arterial evaluation performed on August 2, 2010 and as requested by her physician Boris Shemer, M.D.

I have reviewed the Aggrieved Party's August 2, 2010 filing and find that it does not abate or correct initial deficiencies Judge Montaño found with the initial unacceptable complaint. For that reason, I find that the Aggrieved Party has failed to file an acceptable complaint challenging an LCD, within the time frame provided. Accordingly, this case must be dismissed pursuant to 42 C.F.R. § 426.410 (c)(2).

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) is not part of the record before me and is not included for that reason.

The Aggrieved Party 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/

Richard J. Smith
Administrative Law Judge