



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

JAN 23 1985

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT
SECRETARY OF DEFENSE (HEALTH AFFAIRS)
UNITED STATES DEPARTMENT OF DEFENSE

Appeal of)	
)	
Sponsor:)	OASD(HA) Case File 85-02
)	FINAL DECISION
SSN:)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 85-02 pursuant to 10 U.S.C. 1071-1092 and DoD 6010.8-R, chapter X. The appealing party is the CHAMPUS beneficiary, the spouse of a retired member of the United States Navy. The appeal involves the denial of CHAMPUS cost-sharing of inpatient psychiatric care and professional services provided April 21 through September 24, 1982. The amount in dispute involves \$33,400.00 in billed charges.

The hearing file of record, the Hearing Officer's Recommended Decision, and the Analysis and Recommendation of the Director, OCHAMPUS, have been reviewed. It is the Hearing Officer's recommendation that CHAMPUS cost-sharing of the inpatient care from April 21 through September 24, 1982, be denied. The Hearing Officer found the psychiatric hospitalization subsequent to April 20, 1982, was not medically necessary and was provided above the appropriate level of care.

The Director, OCHAMPUS, concurs with the Hearing Officer's Recommended Decision and recommends its adoption by the Assistant Secretary of Defense (Health Affairs) as the FINAL DECISION.

The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, adopts and incorporates by reference the Hearing Officer's Recommended Decision to deny CHAMPUS cost-sharing of the inpatient care provided April 21 through September 24, 1982, based on findings the care was not medically necessary and was provided above the appropriate level of care.

In my review, I find the Recommended Decision adequately states and analyzes the issues, applicable authorities, and evidence in this appeal. The findings are fully supported by the Recommended Decision and the appeal record. Additional factual and regulation analysis is not required. The Recommended Decision is acceptable for adoption as the FINAL DECISION by this office.

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to deny CHAMPUS cost-sharing of the inpatient hospitalization and professional psychotherapy services provided April 21 through September 24, 1982, as not medically necessary and provided above the appropriate level of care. As the appeal record indicates the fiscal intermediary issued erroneous payments to the hospital and attending physician, the matter of recoupment of these payments under the Federal Claims Collection Act is referred to the Director, OCHAMPUS. Issuance of this FINAL DECISION completes the administrative appeal process under DoD 6010.8-R, chapter X and no further appeal of this decision is available.



Vernon McKenzie
Acting Principal Deputy Assistant Secretary

RECOMMENDED DECISION
Claim for CHAMPUS Benefits
Civilian Health and Medical Program of the
Uniformed Services (CHAMPUS)

Appeal of)
Sponsor,) RECOMMENDED DECISION
SSN:)

This is the Recommended Decision of the CHAMPUS Hearing Officer, Don F. Wiginton, in the CHAMPUS appeal case file of , and is authorized pursuant to 10 U.S.C., 1071-1089 and DOD 6010.8-R, Chapter X. The appealing party is the beneficiary, and is represented by her husband, United States Navy, Retired. The appeal involves the denial of CHAMPUS cost-sharing for inpatient hospital care from April 20, 1982 through September 24, 1982. The amount in dispute is Thirty Three Thousand Four Hundred Dollars (\$33,400.00).

The hearing file of record has been reviewed. It is the OCHAMPUS position that the formal review determination, issued March 8, 1984, denying CHAMPUS cost-sharing of the inpatient hospital care after March 25, 1982 should be modified to allow benefits through April 20, 1982, but that benefits after April 20, 1982 should not be cost-shared as inpatient hospital care was not medically necessary and above the appropriate level of care.

The hearing officer, after due consideration of the appeal record, concurs in the recommendation of OCHAMPUS to deny CHAMPUS cost-sharing after April 20, 1982 through September 24, 1982.

The recommended decision of the hearing officer is, therefore, to allow CHAMPUS cost-sharing for inpatient hospital care January 23, 1982 through April 20, 1982, as medically necessary, but deny CHAMPUS cost-sharing for inpatient hospital stay from April 20, 1982 through September 24, 1982, as not medically necessary and above the appropriate level of care.

FACTUAL BACKGROUND

The beneficiary, Mrs. . . . was fifty two years old at the time of the admission to Peachtree Parkwood Hospital on January 23, 1982. Dr. Howard S. Rosing stated in the history that she was admitted for depression and had been under chemotherapy for three to four years. (Exhibit 12 S, page 425) In the Psychiatric History, Dr. Stephen Preas gave the beneficiary a diagnosis of manic depression illness noting that she was "slightly depressed". (Exhibit 12 R, page 424) He further notes that "It is also important to know that she does have difficulty with her marital rela-

tionship. She is married to a Navy man who has a drinking problem and who reportedly expects to get help with his own feelings by having his wife change". (Exhibit 12 R, page 424) On January 28, 1982 gave a psychological history of to Mr. Jim Struve, a Masters level social worker, in which he reported his life with as being relatively happy until four or five years ago. He admitted that both he and have a "history of heavy alcohol consumption". He reports this fact as the source of much conflict between them particularly when quit drinking and continued to drink. She has threatened divorce on numerous occasions. (Exhibit 12 E, page 16) On October 4, 1982, Dr. Preas dictated the discharge summary in which he described the Treatment and Course in the Hospital as essentially for the single prominent problem of her depression. (Exhibit 12 B, page 2) He stated that the major dynamic is that the patient has "low self-esteem as well as poor perception of her own individuality". He assigns a final diagnosis of (1) severe depression, recurrent, and (2) narcissistic personality disorder. (Exhibit 12 B, page 4) During the course of her inpatient stay, the beneficiary took seventy four therapeutic leaves from the hospital beginning February 18, 1982 through September 23, 1982. These leaves varied in duration from a few minutes to entire weekends. (Exhibit 48) The leaves were authorized by Dr. Preas. (Exhibit 45) The beneficiary was required to sign a release to the hospital releasing it from liability during the absences, and further certifying that the beneficiary was leaving the hospital at her own request and in her own custody. (Exhibit 48) On November 14, 1984, Dr. Preas wrote the hearing officer that "the major work of this hospitalization was for her narcissism", and the numerous therapeutic leaves were necessary for treating her narcissism. (Exhibit 44)

CHAMPUS cost-shared the first sixty days (January 23, 1982 through March 24, 1982) but the last six months were found not to be medically necessary and at the appropriate level of care. The period March 25, 1982 through September 24, 1982 was denied by reconsideration determination dated September 7, 1983. (Exhibit 31, page 3) The reconsideration letter advised that a peer review conducted by the Mutual of Omaha, CHAMPUS fiscal intermediary, approved only sixty days of inpatient care. In fact, the fiscal intermediary submitted the claim to three different peer reviewers and it was their decision to uphold the initial peer review allowing only sixty days of inpatient care. (Exhibit 31, page 3)

On December 21, 1983, the beneficiary requested a formal review and on March 8, 1984, the formal review decision was rendered which upheld the initial determination that only sixty days of inpatient care was medically necessary or appropriate and that CHAMPUS benefits cannot be authorized for the period after March 25, 1982 through September 24, 1982. (Exhibit 38, page 5) The beneficiary then requested a hearing. Dr. Preas wrote on April 18, 1984 that inpatient review was necessary for the beneficiary to conduct medication trials which could not have been done on an outpatient basis. He further stated that she could not have

maintained herself at home during the trial period. (Exhibit 39, page 3) The beneficiary requested a hearing on May 1, 1984. (Exhibit 39)

In preparation for the hearing, OCHAMPUS submitted the case to the American Psychiatric Association for an additional peer review. (Exhibit 42, page 10) Dr. Robert W. Gibson was assigned the case to review by the American Psychiatric Association. It is his opinion that hospitalization was not required after April 20, 1982. (Exhibit 42, page 5) In response to that review, on November 2, 1984 OCHAMPUS changed their position to allow inpatient care through April 20, 1982 resulting in a remaining amount in dispute of Thirty Three Thousand Four Hundred Dollars (\$33,400.00). (Exhibit 43) In the position paper, the OCHAMPUS advisor points out that the case has been reviewed on five different occasions by psychiatric medical reviewers. All but the last peer reviewer considered the stay excessive after sixty days. The American Psychiatric Association peer reviewer suggested that the patient could have resided in a motel, halfway house or a relative's house while the intensive outpatient psychotherapy was conducted as an alternative as to inpatient care.

The hearing was conducted in Atlanta, Georgia on November 6, 1984. OCHAMPUS was represented by its Attorney/Advisor, Linda Rediger, and the beneficiary appeared with her husband, Also testifying at the hearing was Dr. Stephen Preas and Miss Sarah Mings, a Masters level psychologist.

At the hearing Dr. Preas stated that the hospitalization was lengthen because he was treating the beneficiary for both depression and narcissistic personality disorder. Her low self-esteem and narcissistic personality made treatment of depression more difficult and prolong. The patient was removed from medication and required to reach "the bottom of the barrel" to give up her grandiosity. This aspect of her problem had been "medicated away" with her depression and required a long period for her to be without medication and to act out her personality disorders. He stated three weeks would have been sufficient time to remove the medication if depression was all that he was treating, but it was not long enough for the dual diagnosis. Dr. Preas was concerned with the beneficiary's diet and did not feel she would have maintain an adequate diet on an outpatient basis due to her depression. The hospital staff was the type structured environment and support she needed during this period. The hospital staff was required because family and friends did not have the expertise or availability that the staff had.

The marital difficulties at home would have made the family a poor supportive environment. He stated he saw the patient five times per week for forty five minutes sessions

The beneficiary saw psychiatrists ninety five times in the four years leading up to the stay at Peachtree Parkwood Hospital for a cost of Four Thousand Two Hundred Dollars (\$4,200.00). She has seen psychiatrists sixty five times and marital counselors fourteen times for a total of seventy nine times and a cost of

Four Thousand Three Hundred Dollars (\$4,300.00) after the hospital stay. Dr. Preas stated the beneficiary's level of medication was the same at discharge as on admission except that the Activan had been eliminated. Discharge planning was initiated after the medical records department of the Peachtree Parkwood Hospital complained that CHAMPUS would not pay for the beneficiary's stay. This complaint precipitated the discharge planning which occurred in September, 1982, even though Dr. Preas did not feel she was completely ready. He stated he felt pressured to discharge the patient sooner than he might have because of the financial problems that the would face if the insurance companies did not pay under their contract. (Exhibit 21, page 3)

Miss Sarah Mings, a psychologist, stated she treated the beneficiary between January and September, 1982 and that in April or May, 1982, the beneficiary "hit a core of depression material and began re-grouping and put her personality back together". Miss Mings said the patient could not have been treated on an outpatient basis because she was too fragile for that environment. The beneficiary was easily tearful. Miss Mings' principal involvement was the emotional support, community involvement and group therapy.

 testified at the hearing that he could not see his wife for many months while she was in the hospital because she did not want to see him. He stated this interrupted their marital counseling and it was not until May 30, 1982 that his wife permitted his visits. They began marital counseling in August 1982, which continued after discharge on an outpatient basis back in Pensacola. During the period he was not permitted to see his wife, Mr. was counseled twenty two times by Dr. Dan C. Overlay, a psychologist. The couple had seventeen marital counseling sessions after the beneficiary's discharge. The therapeutic leaves taken by his wife were "working leaves", where she had specific goals and objectives to meet on the "outside". Sometimes those leaves were just shorttrips to get a coke or go to a restaurant for a meal. Mr. said on one occasion he accompanied his wife to a restaurant for a meal and they had to leave after ordering the meal because his wife was unable to stay. She had to rush back to the hospital to be left alone. He said she would probably have been committed to a mental institution if she had not obtained the treatment at Peachtree Parkwood Hospital.

Mrs. testified that her schedule was quite busy at the hospital and that she was in different meetings all day long. There were asserted classes, craft classes, community groups, neighborhood groups and structural sessions and individual psychiatric counseling with Dr. Preas. She experienced no incident requiring emergency medical facilities or use of the hospital staff. To earn therapeutic leave, she had to obtain the approval of her peers in the community group sessions. She did not initiate discharge planning, however, on August 18, 1982 she had her fifty third birthday. She stated she woke up that day feeling "born again" and felt substantially improved so that discharge planning could go forward. Her fear level was reduced considerably. After her discharge, she stayed with her son one week and then went home but returned each of the

next four weekends for counseling. She then began outpatient psychiatric counseling in the Pensacola area as well as marital counseling.

ISSUE AND FINDING OF FACT

The issue in this case is whether the inpatient psychiatric care was medically necessary and the appropriate level of care after April 20, 1982.

STATEMENT OF AUTHORITY

CHAMPUS benefits are authorized by Congressional legislation incorporated in Chapter 55 of Title 10, United States Code, and implemented by the Secretary of Defense and the Secretary of Health and Human Services in the Department of Defense Regulation 6010.8-R. Specific regulation provisions pertinent to this case are set forth below.

Chapter IV, subsection A.1., states that subject to any and all applicable definitions, conditions, limitations, and/or exclusions specified or enumerated in the regulation, CHAMPUS will pay for medically necessary services and supplies required in the diagnosis and treatment of illness or injury.

Chapter II, subsection B. 104., defines "medically necessary" in part, as the level of services and supplies (that is, frequency, extent and kinds) adequate for the diagnosis and treatment of illness or injury and states that "medically necessary" includes the concept of "appropriate medical care."

Chapter II, subsection B.14., defines "appropriate medical care," in part, as that medical care where the medical services performed in the treatment of a disease or injury are in keeping with the generally acceptable norm for medical practice in the United States and specifies that the medical environment in which the medical services are performed must be at the level adequate to provide the required medical care.

Chapter IV, subsection G.1., states that service and supplies which are not medically necessary for the diagnosis and/or treatment of a covered illness or injury are specifically excluded from the CHAMPUS Basic Program.

Chapter IV, paragraph B.1.g., states in part, that for purposes of inpatient care, the level of institutional care for which Basis Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment.

Chapter IV, subsection G.3., specifically excludes services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to

provide the necessary medical care.

Chapter VII, paragraph B.s.j., provides that hospitals must submit an itemized billing showing each item of service and/or supply provided for each day covered by the claim.

Chapter IV, subsection A.10., provides, "that the Director, OCHAMPUS (or a designee), is responsible for utilization review and quality assurance activities and shall issue such generally accepted standards, norms and criteria as are necessary to assure compliance. Such utilization review and quality assurance standards, norms and criteria shall include, but not be limited to, need for inpatient admission, length of inpatient stay, level of care, appropriateness of treatment, level of institutional care required, etc."

Chapter IV, subsection B.1., provides that, "benefits may be extended for those covered services and supplies provided by a hospital or other authorized insitutional provider when such services and supplies are ordered, directed, and/or prescribed by a physicaian and provided in accordance with good medical practice and established standards of quality."

Chapter IV, parragraph B.1.f., provides that, "covered services and supplies must be rendered in connection with and directly related to a covered diagnosis and/or definitive set of symptoms requiring otherwise authorized medically necessary treatment."

CHAMPUS Manual (6475.1-M), for Inpatient and Outpatient Psychiatric Claims Review, claims covering an inpatient stay in excess of 60 days must be reviewed by peer reviewers to determine if an inpatient setting continues to be medically necessary.

Chapter IV, subsection A.10., provides that the director, OCHAMPUS is responsible for utilization review and shall issue generally accepted standards as are necessary to assure compliance for the length of inpatient stay. The CHAMPUS Manual (6475.1-M) requires peer review for inpatient psychiatric stay in excess of sixty days. CHAMPUS submitted the beneficiary's file to peer reviews on five different occasions. The peer review most favorable to the beneficiary, that conducted by Dr. Robert Gibson for the American Psychiatric Association, found that inpatient stay after April 20, 1982 was not medically necessary or at the appropriate level of care. Dr. Gibson felt that the beneficiary could have been treated on an outpatient basis after that date. (Exhibit 42, page 5) The first peer reviewer felt that the need for inpatient care was not indicated after March 15, 1982 and that intensive martial counseling could have been conducted on an outpatient basis. The second reviewer felt that the excessive length of stay may have been due to the "psychopharmacological approach". The third reviewer felt that hospitalization was not justified after sixty days and that the patient could have resided in a motel, halfway house or a relative's house while intensive outpatient therapy was conducted. The fourth reviewer concurred the therapy

could have been conducted on an outpatient basis after sixty days. Dr. Gibson, in the fifth American Psychiatric Association review, felt that after April 20, 1982 there was no longer any indications for hospitalizations. He stated the withholding of medication was unduly long in a patient for whom the major reason for hospitalization is depression.

The utilization review chairman of the Peachtree Parkwood Hospital wrote on April 6, 1983 that with the patient's prior history of psychotherapy and being so far from home, required the extended hospitalization. (Exhibit 21, page 1) The need for marital counseling was made more difficult by the distance and prolong the stay. However, if marital counseling was needed and the remote location of inpatient care was a barrier to that counseling, it seems logical that an earlier discharge is indicated so that marital counseling on an outpatient basis could be obtained. Dr. Preas wrote in response to the utilization review conference on March 31, 1983 (Exhibit 21, page 4) that the beneficiary might have been discharged sooner if she had been from the Atlanta area where she could have stayed in therapy with him on an outpatient basis. On April 18, 1984 he wrote that as she was not from the Atlanta area "the hospital stay in my opinion was necessarily longer". (Exhibit 39, page 2) He further states even if the beneficiary had lived in the Atlanta area, he could not have conducted the medication trials without her being in the hospital. He stated she could not have maintained herself at home during this trial period. (Exhibit 39, page 3) However, the therapeutic leaves authorized by Dr. Preas and those taken by the beneficiary are considerable during this period. She was obviously maintaining herself for various periods of time outside the hospital environment and indeed supervising her own medication. testified at the hearing during some of those leaves the beneficiary laid around her son's home and was anxious to get back to the hospital. However, that does not mean she required the facilities of the hospital or she could not operated as an outpatient. The mere fact that one of the underlining problems was marital discord may have made the hospital environment preferable, and even more comfortable to the beneficiary. But that does not mean it was medically necessary and even Dr. Preas does not suggest that inpatient care is required for the marital counseling. The Psychiatric History, Physical, and the Discharge Summary all identify the principal purpose for hospitalization as depression. However, Dr. Preas stated at the hearing and in his letter to the hearing officer dated November 14, 1984, (Exhibit 44) he shifts the emphasis - and states "the major work of this hospitalization was for her narcissism." The therapeutic leaves were regimented to allow the beneficiary as much distance as she chose but knowing she could return immediately on becoming anxious. The hearing officer fails to see the demonstration of anxiety and/or depression that requires hospitalization. The hearing officer question Mrs. and Dr. Preas whether there was any incident after April 20, 1982 that required the immediate facilities and expertise of the hospital. There were no incidences when the beneficiary talked to the psychiatrist outside of her scheduled periods nor did she have any episodes that even altered her routine. The therapeutice leaves,

while authorized by Dr. Preas and her peers, were taken at her own initiative. She certainly demonstrated a willingness and an ability to function on the outside for varying lengths of time.

While the hospital environment may have been preferred by both the psychiatrist and the beneficiary, this does not meet the burden of proof that it was medically necessary and at the appropriate level of care. The burden of proof is on the beneficiary to establish its medical necessity. The weight of the medical evidence in this case is clearly that it was not medically necessary after April 20, 1982. The five psychiatric reviews all conclude it was not necessary and even the utilization review committee of the hospital question the stay based on the documentation. The hearing officer does not share the utilization review chairman's opinion that the distance from home and the need for marital counseling justifies the continue stay. The beneficiary was discharged on substantially the same medication that she was on upon admission (except Activan was discontinued). Additionally, in the four years preceding her hospitalization, she was seen by psychiatrists on an outpatient basis ninety five times. In the two years following the hospitalization she has been seen by psychiatrists sixty five times and marital counseling for fourteen sessions for a total of seventy nine outpatient sessions. Her outpatient therapy sessions were more frequent after hospitalization and apparently successful, as she stated she was no longer in therapy. The beneficiary obviously demonstrated her ability to function on an outpatient basis. Dr. Preas stated he initiated discharge planning after the complaints from the medical records department and not as a result of anything happening in the therapy. One wonders if the medical records department had complained in April, 1982 if the beneficiary could have been discharged equally successful.

The hearing officer finds that inpatient psychiatric care from January 23, 1982 through April 20, 1982 is medically necessary and at the appropriate level of care. Inpatient care after April 20, 1982 was not medically necessary nor at the appropriate level of care.

FINDING OF FACT

1. The beneficiary was medically depressed upon her admission to Peachtree Parkwood Hospital on January 23, 1982 and inpatient hospital care was medically necessary and the appropriate level of care from January 23, 1982 through April 20, 1982.
2. After April 20, 1982 the beneficiary could have been treated on an outpatient basis and inpatient care was neither medically necessary nor at the appropriate level of care.

SUMMARY

In summary, it is the recommended decision of the hearing officer that inpatient psychiatric care provided the beneficiary from January 23, 1982 through April 20, 1982 was medically necessary and at the appropriate level of care and CHAMPUS should cost-share in the expense. Further, that inpatient stay after April 20, 1982 through September 24, 1982 was not medically necessary or at the appropriate level of care and CHAMPUS should not cost-share any expenses related to that period.

Done this the 26th day of November, 1984.


Don F. Wiginton, Hearing Officer