

16 FEB 1979

MEMORANDUM FOR The Director, OCHAMPUS

SUBJECT: FINAL DECISION: Appeal Case
(OASD(HA) Appeal File 01-79)

The Hearing File of Record and the CHAMPUS Hearing Officer's Recommended Decision (along with the Memorandum of Concurrence from OCHAMPUS) on the Appeal Case have been reviewed:

PRIMARY ISSUES IN DISPUTE: FINAL DECISION

It is the decision of the Acting Assistant Secretary of Defense (Health Affairs) that the Hearing Officer's Recommendation to uphold the denial of CHAMPUS benefits for 19 April 1976 commercial air transfer from Mexico City, Mexico to Fort Worth, Texas be accepted as the FINAL DECISION. This is based on the following review findings:

1. That the Hearing File of Record did not support the medical necessity for moving the patient to Carswell AFB Hospital to recuperate.
 - o The critical medical care was rendered immediately following the accident by the Mexico City hospital - i.e., the emergency care and reduction of her fractures including surgery on the elbow (for which permission was granted by the sponsor);
 - o The medical care rendered in Mexico City was professionally acceptable and competent (borne out by the beneficiary's uneventful convalescence at Carswell AFB Hospital);
 - o The Mexico City hospital also had the professional capability to care for during her convalescent period, so it was not necessary to move her to Carswell for this reason;
 - o The physician and/or family may well have felt it was better for the patient to be close to her family

and this is understandable; however, transfer for this reason would be for comfort and convenience, not medical necessity; and

- o The fact that the sponsor may have discussed the transfer with the Carswell AFB people, the State Department representative in Mexico City and a Congressman, is immaterial since none of these agencies or individuals has authority to make benefit determinations under CHAMPUS. There is no documentation to indicate any of these approved the air transfer in the sense of indicating CHAMPUS benefits would be provided.

2. That the sponsor's position on saving the Government money cannot be accepted as a valid issue (i.e., that while he admits he recognized the regulatory limitations on the use of air ambulance, he had transferred by air to save the Government money).

- o The law and applicable regulations do not give each individual beneficiary (or sponsor) the privilege of determining what benefits are to be provided based on a personal calculation of savings to the Government;
- o The fact that several available military hospitals were passed over to get to Carswell AFB Hospital (located in Fort Worth where the family resided) further reinforces the assumption that a major purpose of the transfer was to bring home (rather than for the reasons of medical necessity or to save the Government money).

3. That the Hearing Officer also found that the commercial aircraft on a regularly scheduled commercial flight qualified as an air ambulance is disturbing and we are in disagreement. Our position is based on the following:

- o The Braniff flight's primary purpose was to provide air transportation for regular commercial passengers;
- o The turning down of regular passenger seats to accommodate the stretcher and the hanging of a privacy curtain do not convert a commercial aircraft into an air ambulance;

- o The availability of oxygen is routine on all commercial flights and did not represent special medical equipment for s air transfer; and
- o The requirement for an attendant is not controlling since this may also be required in order for certain handicapped individuals or very young children to fly commercially, but it does not qualify the aircraft as an air ambulance.

Because the Hearing Officer's position on this point did not effect the outcome of the case and since his basis was a regulation no longer in force, we are not remanding the case back to the Hearing Officer for additional review. However, OCHAMPUS is directed to advise the appealing party of our disagreement on this point.

RELATED ISSUE

We note that the beneficiary was 18 years of age when the disputed commercial air travel occurred. Therefore, to be in compliance with the provisions of the Privacy Act, should have filed her own appeal or provided OCHAMPUS with a letter appointing her father (the sponsor) as her representative. The Hearing File of Record does not indicate this was done. We recognize this was an early hearing case and this may have been overlooked. While it does not appear to be a sufficiently serious breach of procedure to require that the case be remanded back to the Hearing Officer, the Notice of FINAL DECISION must be sent to , not her father.

SUMMARY

This FINAL DECISION in no way implies that it was inappropriate to move to her home area via commercial aircraft. It is quite understandable that she would feel more secure in familiar surroundings, that her family would be less worried, and that it would be much more convenient for both her and her family. However, CHAMPUS benefits are not payable for services primarily for convenience or comfort purposes, nor for commercial travel, regardless of the merits. This remains the responsibility of the individual beneficiary (or sponsor).



Vernon McKenzie
Acting Assistant Secretary of Defense
(Health Affairs)