ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

31 DEC 1979

HEALTH AFFAIRS

FINAL DECISION: Appeal
OASD(HA) Case File 06-79

The Hearing File of Record and the Hearing Officer's RECOMMENDED DECISION (along with the Memorandum of Concurrence from the Director, OCHAMPUS) on OASD(HA) Appeal Case No. 06-79 have been reviewed. The appealing party elected not to appear at the hearing and therefore the hearing was conducted on the record. The amount in dispute in this case is $720.00. It was the Hearing Officer's recommendation that the CHAMPUS Contractor's initial determination to deny CHAMPUS benefits for room and board expenses incurred during the hospital confinement from 2 October 1975 to 8 October 1975 be upheld. It was his finding that confinement in the hospital, the purpose of which was primarily for diagnostic testing and evaluation, was not medically necessary [essential] as defined in AR 40-121. He further found that appropriate CHAMPUS benefits had been provided for the other covered services (the diagnostic tests and evaluations) as permitted by the applicable Regulation. The Principal Deputy Assistant Secretary of Defense (Health Affairs), acting as the authorized designee for the Assistant Secretary, concurs with this Recommendation and accepts it as the FINAL DECISION.

PRIMARY ISSUE

The primary issue in dispute in this case is whether the inpatient hospital setting was necessary and appropriate in order to conduct diagnostic testing and evaluations as prescribed by the attending physician. AR 40-121, the applicable regulation defines "necessary" service as "those services...ordered by a provider of care as essential for the [medical] care of the patient or treatment of the patient's medical or surgical condition." [emphasis added] (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-3(c).) The appealing party, her spouse, her referring physician and her attending physician, all submitted statements detailing the factors which, in their view, supported

the position that the inpatient hospital confinement in question was necessary for the completion of the diagnostic testing and evaluation. Nonetheless, it is the finding of the Principal Deputy Secretary of Defense (Health Affairs) that the Hearing Officer's conclusion was a proper one based on the evidence presented and that his rationale and findings were correct. However, in order to insure that the appealing party fully understands the bases upon which the initial denial is being reaffirmed and upheld (i.e., specifically, the bases for the decision that the inhospital setting was not medically necessary for the proper completion of the diagnostic tests and evaluations), each of the points presented by the appealing party or on her behalf is addressed in this FINAL DECISION.

- The Patient's Condition. It was claimed by the appealing party and her physicians that the inhospital setting was necessary and appropriate based on her condition at the time the disputed admission occurred. Statements indicating urinary bladder dysfunction and recurrent leg and back pain were submitted. Further, the physicians stated that the extensive testing could not be "tolerated" on an outpatient basis. However, the clinical records submitted as evidence did not indicate any acute distress, chronic disability or impaired physical or mental function on the part of the appealing party. The beneficiary remained alert, capable of self-care and ambulatory throughout the confinement. The clinical records further indicate that on at least one occasion she was permitted to leave the hospital premises for an undisclosed outing and that some tests were permitted to be performed as an outpatient. It is reasonable to conclude, therefore, that an ambulatory, non-disabled, nondebilitated patient could participate in a program of outpatient diagnotic testing and evaluation without adversely affecting her health. The clinical evidence did not support the position that the condition of the appealing party precluded outpatient testing and evaluation--i.e., the inpatient setting was not medically necessary [essential] to provide the required care. (Reference: Army Regulation AR 40-121, Chapter I, Section 1-3(c).)

- Expeditious Evaluation Necessary. The referring physician claimed that his examination of the appealing party indicated a need for an expedited evaluation so that immediate therapy could be instituted. The records show that this initial examination was performed early in September; the hospital confinement for diagnostic testing and evaluation did not begin until 2 October 1975. If the appealing party could wait three or four weeks for the admission to occur, it cannot therefore be reasonably concluded that an acute situation actually existed. Simply having diagnostic testing done on an inpatient basis does not equate to "expeditious" evaluation and/or "immediate" treatment. Time, not the place the tests are conducted, would be the controlling factor if immediate therapy was required. Further, the results of the tests and evaluation did not initiate any immediate medical or surgical intervention. However, the question is moot inasmuch as the clinical records presented no evidence of any emergency or crisis situation which required immediate intervention. Even if immediate treatment had been found to be a valid issue in this case, it would not have automatically qualified the hospital confinement as "essential." (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-3 (c).)

- Types of Services Rendered. Although her physicians made no such claim, the appealing party asserted that the disputed inpatient admission was necessary because the types of services rendered her during the confinement required an inpatient setting for their performance. During confinement in the hospital the appealing party received numerous diagnostic tests and evaluations. These included complete hematologic and chemical analysis of the blood and urine studies; Xrays of the gall bladder, upper and lower intestinal tract, kidneys, ureters and bladder, and thoracic and lumbosacral spine. There were electrocardiograms and electromyelograms, plus nerve conduction studies performed. Special breast studies were also done. A sigmoidoscopic examination revealed a small, benign polyp which was excised without complication and without the use of anesthetics. Other than the administration of oral medication (with the exception

of one injection for nausea), there was no therapeutic plan of treatment conducted during the confinement. While the physician's order sheet lists physical therapy, the clinical record does not indicate any therapeutic physical medicine program was instituted. During the confinement the appealing party received a gastro-intestinal consultation, a rheumatology consultation and a urology consultation.

None of the described procedures or services requires an inpatient setting unless the condition of the patient otherwise precludes their being done on an outpatient basis. As stated previously, this was not indicated in this case. All of the tests and evaluations were of a type which could be (and routinely are) performed in a physician's office or the outpatient department of a hospital. Some required special pre-test preparation but only of the type which can easily be performed in the home setting with use of laxatives and packaged enemata products. None of the diagnostic studies were of a type which require the hospital setting for post-test special care or observation. In fact, the urological consultant suggested that the planned cystoscopy be performed later in his office rather than in the hospital. From the medical evidence submitted it cannot be concluded that the diagnostic procedures (or the other services rendered) required the inpatient setting for their performance--i.e., hospital confinement was not medically necessary [essential] to provide the care. (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-3(c).)

- Requirement for 24-Hour Urine Collection. The appealing party specifically claimed the need for inpatient status to fulfill the requirement for a 24-hour urine collection. (She erroneously referred to a "24-hour urine culture.") A 24-hour urine collection does not require any special skill to accumulate, containerize and refrigerate the urine produced over a 24-hour period. No special type of refrigeration is required--a home unit is quite adequate. Patients routinely are given instructions on this procedure to perform in the home setting; no physician supervision is necessary. The requirement for a 24-hour urine collection would not qualify an inpatient stay as medically necessary

[essential]. (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-3 (c).) It is further noted for the record that even if it had been determined that this procedure had specifically required the inpatient setting for its performance, it would have then qualified only one of the inpatient days for benefit consideration--not the entire six (6) day stay.

- Bowel Preparation. The appealing party also claimed that the inpatient setting was required in order to prepare herself for the cleansing enemas required prior to certain examinations. Again, bowel preparation is routinely conducted outside the hospital setting. Enemata are easily self-administered; physician supervision is not required. Bowel preparation does not require an inpatient setting for its performance and thus cannot qualify the disputed inpatient stay for benefit consideration--i.e., the hospital confinement was not medically necessary [essential] to render the medical care (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-3 9c).)

- Removal of Benign Rectal Polyp. The appealing party also indicated that "several tumors" were removed from her colon and that this required an inpatient hospital setting. The clinical records indicated that one small, benign rectal polyp was excised without complication during a proctosigmoidoscopy. General anesthesia was not used. These were no specific post-operative procedures or observations prescribed or performed. The removal of the polyp in the manner described is similar to procedures routinely performed in physicians' offices and in outpatient clinics--it would not require an inpatient setting. Removal of the polyp does not qualify the inpatient stay as medically necessary [essential]. (Reference: Army Regulation AR 40-121, Chapter 1, Section 13 (c).) It is also noted for the record that since the presence of the polyp was unknown at the time the admission occurred, it could not have been a factor in determining the need for the inpatient confinement.

- Treatment Rendered During Confinement. The hospital records did not outline any specific therapeutic regimen conducted during the confinement. The appealing party received medication, most of which she had been self-administering prior to admission. Except for one

injection for nausea, all drugs were administered orally. Medication for back and leg pain was prescribed and the appealing party received it two to three times per day. The type of pain reliever prescribed was a drug routinely given on an outpatient basis. None of the medications were of a type which would require special observation pre- or post-administration, nor were they of a type expected to produce severe adverse reactions which might require emergency intervention. (Physical therapy was also prescribed, but if rendered, there was no indication as to the type or frequency of this service in the record.) The minimal "treatment" administered during the confinement was not sufficient to qualify the admission as medically necessary [essential]. (Reference: Army Regulation AR 40-121, Chapter 1-3(c).)

- Constant and Continuous Testing. The appealing party also claimed that the hospital inpatient setting was necessary because she was "continuously scheduled for tests and examinations, sometimes into the evening." The medical evidence contained in the Hearing File of Record does not bear this out, however. In fact, it indicates that the testing was actually performed at a relatively liesurely pace. However, even if the tests and evaluations had been very tightly scheduled, the extent of testing is not of itself sufficient to qualify an inpatient stay as medically necessary [essential]. (Reference: Army Regualtion AR 40-121, Section 1-3 (c).) For the Record even had the inpatient stay been judged medically necessary [essential] because of the patient's condition, only three days of the stay would have been considered for benefits. The balance of the days would have been considered to be excessive for the services rendered.

- Distance To Hospital: Urinary Frequency. The appealing party strongly asserted the need for the inpatient confinement because the medical facility was 150 miles from her residence and would require a 300 mile round trip each day if the tests had been performed on an out-patient basis. She further claimed that her urinary frequency problem was a complicating factor--making such a daily trip impossible. The appealing party voluntarily sought her care from the medical facility in question--under CHAMPUS a beneficiary has this privilege. However, when the choice is a medical facility not conveniently

located to the patient's home, an inpatient stay in lieu of a hotel/motel stay or a daily commute is not the responsibility of the Program; rather it is the personal responsibility of the beneficiary/patient. With the right of free choice of medical provider comes the parallel responsibility to assume any non-medical expenses associated with exercising that right. As to the urinary frequency--there is nothing in the evidence submitted to indicate the extent of the problem. However, even if it was significant, while it would admittedly be an inconvenience and a nuisance, it would not be sufficient reason for the diagnostic tests and evaluations to be performed on an inpatient basis. The appealing party was sufficiently able to make the trip before and after the admission; and if driving this distance on a daily basis was unacceptable to her, traveling from a local hotel/motel would have been of no greater inconvenience than travelling from her home to a close-by medical facility. We reiterate: because a beneficiary chooses to seek medical care outside of the area where he/she resides in no way obligates the Program to automatically pay for the medical care on an inpatient basis. What is controlling is whether or not the hospital setting is medically necessary [essential] to provide the care. An admission primarily to accommodate long travelling distances from home and/or to minimize personal inconveniences remains the beneficiary's responsibility, not the Program's--because the confinement it is not "essential" to render the care. (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-3(c).)

- Medical Necessity. Despite claims to the contrary, the clinical records in this case do not support the need for an inpatient setting to perform the diagnostic tests and evaluations. While physician convenience may have been a factor, the record strongly supports the assumption that the primary purpose of the inpatient admission was for the convenience of the appealing party--i.e., because the medical facility where she was receiving her care was located 150 miles from her home. Medical necessity was not the reason for the admission--i.e., it was not "essential" to provide the medical care on an inpatient basis. (Reference: Army Regulation AR 40-121, Section 1-3(c).) This case illustrates a classic misuse of the hospital inpatient setting (the most expensive single element of medical care) for services that could and should have been performed on an outpatient basis.

Our findings indicate there was no evidence presented in the Hearing File of Record which supported the appealing party's claim that the questioned inpatient stay during the period 2 October 1975 to 8 October 1975 met the definition of a "necessary" service. (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-3(c).)

SECONDARY ISSUES

1. Availability of CHAMPUS Information. The appealing party complained that there was not sufficient information available concerning CHAMPUS. She stated she was unaware of any restrictions on benefits for inpatient hospital care and [she implied] the CHAMPUS Advisor did not alert her or her husband to such restrictions. It is pointed out that the applicable regulation had always contained the medically "necessary" [essential] provision, which applied equally to all kinds of services for which CHAMPUS benefits could be extended. In other words, inpatient hospital care is a benefit under CHAMPUS but each specific confinement must meet the "necessary" requirement. If the appealing party fully explained to the CHAMPUS Advisor the reason for her admission and the type of care she would receive, it is unfortunate that she was not alerted to the medical necessity provision.

   CHAMPUS and DoD recognize the need for a broad based information program aimed at beneficiaries and have been very active in this area. A comprehensive CHAMPUS regulation has been published. Major efforts to upgrade the training of CHAMPUS Advisors have been undertaken. These advisors are available for assistance and counselling at all Uniformed Service medical facilities. Significant numbers of special benefit information materials have been published and distributed. Beneficiaries also have access to CHAMPUS Fiscal Intermediaries serving their area as well as OCHAMPUS, the Program's managing agency. Improvements in beneficiary information programs have been made since the incident of the appealing party's disputed admission. Notwithstanding the accomplishments of beneficiary education programs, however, in the last analysis the responsibility to keep informed concerning CHAMPUS benefits and limitations rests with the individual beneficiary. Ignorance of Program requirements and limitations is not a factor in benefit decisions. What is controlling is the law and applicable regulations.

2. Personal Physicians Know Patient Needs Best. It was further asserted by the appealing party that her referring and attending physicians best knew her needs and thus [it was implied] the services they recommended or ordered should be recognized for benefit purposes. In this case it must be assumed the appealing party's physicians considered other than medical need in admitting her as an inpatient. This may have been perfectly appropriate from the standpoint of the appealing party's personal circumstance. However, any costs resulting from a decision based on other than medical necessity can not be considered for Program benefit purposes. The Hearing Officer astutely pointed out in his RECOMMENDED DECISION that the attending physician, "...set forth the reasons for the inpatient stay. Such reasons include time savings, efficiency, and the patient's comfort. Each of these reasons is valid and understandable. Medical Advisors to the CHAMPUS contractor and the CHAMPUS Medical Advisor disagreed not with the reasons [for the inpatient admission] but with the medical necessity."

RELATED ISSUE

Use of Private Room. The Hearing File of Record contains a statement from the attending physician which notes he had placed the appealing party in a private room during her inpatient confinement at her request. The reason given by the appealing party was that because of her urinary frequency problem, if she was in other than a private room she would disturb other patients. Since the inpatient room and board charges incurred during this disputed confinement were denied on the basis the inpatient setting was not medically necessary, the issue of the private room was not addressed. For the record let it be shown that under no circumstances are Program benefits available for a patient-requested private room. In order for a private room to be considered for benefits it requires (a) that the attending physician ordered the private room because in his/her judgement it was medically necessary and (b) that the clinical evidence supports that position; or (c) the situation where the facility only has private rooms--a rare occurrence. In this particular case even if the appeal decision had been that all or part of the inpatient stay was medically necessary, the added cost of the private room would have continued to be denied because it was not necessary [essential] to provide the needed services.

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SUMMARY

This FINAL DECISION in no way implies that the appealing party did not require the diagnostic testing and evaluation. It only confirms that an inpatient hospital setting was not "medically necessary" [essential]. The appealing party's condition did not require that she be confined. Further, all of the diagnostic (and other) procedures and evaluations were of a type that could have been, and routinely are, performed on an outpatient basis without adversely affecting the results of the tests and evaluations or the patient's health and well-being.

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Our review indicates the appealing party has been afforded full due process in her appeal. Issuance of this FINAL DECISION is the concluding step in the CHAMPUS appeals process. No further administrative appeal is available.

Vernon McKenzie
Principal Deputy Assistant Secretary
of Defense (Health Affairs)