



HEALTH AFFAIRS

ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

7 MAR 1980

FINAL DECISION: Appeal  
OASD(HA) Case File 07-79

The Hearing File of Record, the tape of the oral testimony presented at the hearing, and the Hearing Officer's RECOMMENDED DECISION (along with the Memorandum of Concurrence from the Director, OCHAMPUS) on OASD(HA) Appeal Case No. 07-79 have been reviewed. The amount in dispute is \$583.26 (German DM 1,254). It was the Hearing Officer's recommendation that the OCHAMPUSEUR initial determination to deny CHAMPUS benefits for the 30 June 1977 ambulance service be upheld. It was her finding that the ambulance service did not constitute medically necessary local ambulance transport as set forth in the applicable regulation DoD 6010-8.R and did not qualify under the exceptions for long distance ambulance.

After due consideration and review, the Principal Deputy Secretary of Defense (Health Affairs), acting as the authorized designee for the Assistant Secretary, although in general agreement with the Hearing Officer's review of the evidence, rationale and application of proper regulation provisions, hereby chooses not to accept the RECOMMENDED DECISION. This FINAL DECISION is therefore based on the facts contained in the Hearing File of Record and as presented in oral testimony, and REVERSES the initial denial of the ambulance service.

PRIMARY ISSUE IN DISPUTE

Initial Denial. The primary issue in dispute in the case is whether the ambulance service used to transport the appealing party from a German civilian hospital to a U.S. Military Hospital approximately one hundred and fifty (150) miles away met the general requirements for ambulance and qualified under one of the exceptions for long distance (non-local) ambulance service.

The regulation applicable at the time the ambulance service was rendered (DoD 6010.8-R) specified covered ambulance service to be, "... professional ambulance service to, from and between hospitals when medically necessary and in connection with otherwise covered services and supplies and a covered medical condition." A professional ambulance is defined as, "... a specifically designed and equipped land vehicle which contains at a minimum a stretcher, linens, first aid supplies, oxygen equipment and such other lifesaving equipment required by ... applicable local law and manned by personnel trained to render first aid treatment." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section D, Paragraph 3.e.)

The Regulation further defines local ambulance service to be, "... that for which the reasonable charge does not exceed one hundred dollars (\$100.00). Any professional ambulance service which exceeds that amount is considered long distance ambulance service..." [emphasis added] (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section D, Subparagraph 3.e (2)). Exceptions under which long distance ambulance service may be considered for benefits are limited to situations where the patient is being transported, "...from a rural or remote area to the nearest hospital for treatment"; or "... from one hospital which does not have the necessary facilities to treat the patient, to the nearest hospital which does have the necessary facilities." [emphasis added] (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section D, Subparagraph 3.e.(4)(a) and 3.e.(4)(b)).

To be sure the appealing party understands the bases for the initial denial and subsequent appeal decisions confirming the denial, each of the points at issue under applicable regulation DoD 6010.8-R are being addressed.

- o Professional Ambulance Service. Although there is no specific documentation in the Hearing File of Record, based on anecdotal information presented during the oral testimony at the hearing, it can be assumed that the civilian ambulance qualified as a professional land ambulance, meeting the required minimum standards. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section D, Paragraph 3.e)

- o Local vs. Long Distance Ambulance. That the ambulance service in question was "long distance" ambulance rather than "local" was never in dispute. First, the charge was in excess of the \$100 regulatory limit on local ambulance. Second was the obvious fact that the distance between the German hospital where the initial admission had occurred (following the heart attack) and the U.S. Military Hospital was 150 miles. Therefore, any benefit consideration under CHAMPUS Regulation DoD 6010.8-R had to fall under one of the stated exceptions for long distance (non-local) ambulance service. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section D, Subparagraph 3.e.(2)).
- o Long Distance Ambulance: Exception for Remote or Rural Area. The appealing party had been admitted to the German hospital because it was the closest hospital when he had his heart attack. Therefore he was already in the hospital at the time the transfer to the U.S. Military Hospital took place. Further, the location of the German hospital did not qualify as rural or remote. In any event this exception does not apply; it cannot be used to qualify a long distance ambulance run between hospitals. This exception can only impact ambulance service in connection with the initial hospital admission in a case. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section E, Subparagraph 3.e (4)(a).)
- o Long Distance Ambulance: Transfer to Another Hospital with Necessary Facilities. The second exception permits extension of benefits for long distance ambulance if it is necessary to transfer a patient from one hospital which does NOT have the necessary facilities to treat the patient, to the nearest hospital which DOES. The fact that the German Hospital was able to handle heart cases was never disputed by the appealing party. In fact, in the oral testimony both he and his wife confirmed that he could have continued to receive care at the German hospital. (What they objected

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to was the German treatment regimen and German medical attitude, both different from American practices--as well as the language barrier.) As a result the second exception for long distance ambulance is also not applicable to this case--because necessary care was available at the German Hospital. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section E, Subparagraph 3.e (4)(b).)

Therefore, based on the applicable regulation in effect at the time the disputed long distance ambulance service was rendered, the initial determination to deny was correct as were the subsequent appeal decisions--even though some of the rationale was faulty or incomplete.

Reversal Decision. Notwithstanding the above finding, it is the judgement of the Principal Deputy Assistant Secretary of Defense (Health Affairs) that this appeal should be considered under the Transitional Authority provision of the applicable regulation DoD 6010.8-R. This provision recognized there would be a period after the effective date of the current regulation before full implementation of all its provisions could be accomplished. Further, it permitted certain flexibility in applying benefits, particularly where current regulation DoD 6010.8-R is more restrictive than prior regulation AR 40-121. CHAMPUS Regulation DoD 6010.8-R was implemented on 1 June 1977, only 22 days prior to the date the appealing party suffered his heart attack which resulted in his admission to the German Hospital; and which, in turn, resulted in his long distance ambulance transfer to a U.S. Military Hospital nine days later. Further, long distance ambulance is one area where the current regulation is more restrictive than the prior regulation. Also at the time the heart attack occurred, CHAMPUS Advisors in Europe may have been unsure of the provisions of the then brand new regulation, since the special regulation training sessions (for Europe) were not completed until July 1977. Therefore, within the spirit of Transitional Authority we have determined that the disputed long distance ambulance service should be reviewed under the provisions of the prior regulation, AR 40-121.

Prior Regulation AR 40-121 did not speak specifically to long distance ambulance. It stated only that CHAMPUS benefits would be provided for, "Non-Government ambulance service (surface or air) when medically necessary." (Reference: Army Regulation AR 40-121, CHAPTER 5, Section 5-2(x).) The prior regulation further defined "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).)

- o Ambulance Ordered by German Physician. There is no specific written documentation in the Hearing File of Record which attests to the fact that the appealing party's German physician would not permit his transfer to the U.S. Military Hospital except by ambulance. However, the file does contain anecdotal information which tends to corroborate that such was the case, particularly when viewed from the point of view of the standard German treatment regimen for heart attacks. Further, both the appealing party and his spouse orally testified under oath that the attending German physician did insist on transfer by ambulance. It is therefore concluded that the ambulance service met the first requirement that it was "ordered" by a physician [provider] (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-3 (c).)
- o "Medically Necessary" to Use Ambulance to Transport Patient. The reason for ambulance transfer from one hospital to another was not an issue under AR 40-121. The "medically necessary" requirement was limited to whether or not a patient medically required an ambulance to be transported without regard as to whether it was local or long distance ambulance or the reason for the ambulance transfer. (This is as opposed to the current regulation where long distance ambulance is specifically defined and limited and where medical necessity is also applied to the reason a patient is transported by long distance.)

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The Hearing File of Record indicated that the initial denial by OCHAMPUSEUR was primarily based on a finding that the appealing party did not require a transfer by ambulance. However, OASD(HA) does not concur that an ambulance was not medically required. The Hearing File of Record as well as the oral testimony established that the appealing party was confined to complete bed rest and denied ambulation during his nine-day confinement at the German hospital. It would, therefore, not be reasonable that transfer to the U.S. Military Hospital by private car or public conveyance would be advisable. It would appear to involve substantial risk to transport a recovering, non-ambulating cardiac patient one hundred and fifty miles without benefit of emergency equipment being available in case of cardiac failure. Had the patient been afforded early ambulation while in the German hospital, it may well have been possible for the transfer to have been by private vehicle. However, to expect a cardiac patient under the conditions described to endure such a trip cannot be supported. Therefore, it is the judgement of OASD(HA) that the disputed ambulance service meets the second and most critical criteria under AR 40-121, i.e., "medical necessity." (Reference: Army Regulation AR 40-121, CHAPTER 5, Section 5-2(x).)

Therefore, applying the spirit of the Transitional Authority granted under applicable Regulation DoD 6010.8-R, the evidence presented in the Hearing File of Record and in oral testimony was considered under the provisions of the prior regulation, AR 40-121. IT IS THE FINDING OF THE PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS), ACTING AS THE AUTHORIZED DESIGNEE FOR THE ASSISTANT SECRETARY, THAT THE DISPUTED AMBULANCE SERVICE QUALIFIED FOR BENEFITS UNDER SAID PRIOR REGULATION, THUS SUPPORTING THE REVERSAL DECISION PREVIOUSLY STATED.

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## SECONDARY ISSUES

The appealing party and his spouse, while strongly protesting that the ambulance service should be covered, did not focus on the substantive issues in the case. Instead they raised several secondary issues which they asserted supported special consideration to extend benefits. Although in and of themselves they failed to make a case for reversal of the initial decision to deny CHAMPUS benefits for the long distance ambulance service, they do not contra-indicate special consideration of the case in keeping with the spirit of Transitional Authority.

1. German Medical Standards and Practices vs American Treatment Modality. First, it was claimed that the treatment regimen followed in the German hospital was not in keeping with current American medical practices for heart cases. The appealing party's spouse, who is a Registered Nurse, was acutely aware of, and concerned about, the differences she observed. Nonetheless, despite these shortcomings as judged by American standards, it would appear that adequate care was available in the German facility. The fact that the German treatment was different from American methods would not of itself make it medically necessary to transfer the patient. Further, since the appealing party and his wife were on a vacation in Europe, it was their voluntary choice to be in Germany. Foreign travel has certain inherent risks--one of them being the lack of U.S. medical care should an emergency arise. CHAMPUS benefits are not designed to pay all or any part of transportation home from a foreign country in order to assure an individual receives U.S. medical treatment.
2. Language Barrier. Second, it was claimed that because there was no English speaking staff at the German hospital the appealing party was unable to make known his needs and concerns, except for some general communication between his daughter (who was fluent in German) and the attending physician. Since the appealing party had no knowledge of German, he stated his inability to understand and to be understood not only contributed to worry and apprehension on his part, it also meant his ability to cooperate with the staff was limited. While the difficulties of the situation are understood, that there was

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a language barrier is not sufficiently compelling to qualify the disputed ambulance service for benefits. Again, when one travels in a foreign country, language barriers must be anticipated, including in emergency situations. Despite the difficulty with medical terms, in this case the appealing party was most fortunate to have available his daughter who spoke German even if she was unfamiliar with medical terms. Most other individuals in the same situation are not so fortunate.

3. Patient Stress and Apprehension. Third, it was claimed that once he was made aware that the German treatment regimen was not as prescribed in U.S. hospitals, the appealing party became apprehensive about full and complete recovery. (We recognize that because his wife is a nurse, she was more acutely aware of the differences than the usual patient or family member.) It was also stated that the above mentioned language barrier and the autocratic behavior of his German physician, who was unwilling to provide information concerning the illness, further contributed to the patient's stress. This resulted in the appealing party becoming anxious to leave the German hospital and to return to U.S. medical care. Again, while this is most understandable, it would not in and of itself qualify the disputed ambulance service for benefits. However, it did lend weight to the finding that if the patient transfer was to take place, an ambulance was medically necessary.
4. CHAMPUS Advisor Misinformation. Lastly, the appealing party and his spouse both maintained that the CHAMPUS Advisor at the U.S Military Hospital in Germany assured them CHAMPUS would cover the ambulance service from the German Hospital. It was further stated that CHAMPUS Health Benefits Counselors at two West Coast Military Hospitals agreed that the ambulance service should be covered. There is no documentation in the Hearing File of Record to support these statements. However, such verification becomes a moot point because while a CHAMPUS Advisor/Counselor is expected to provide assistance and information to sponsors and beneficiaries, any statements that a specific medical service will be paid under CHAMPUS represents a personal opinion only. Whether or not CHAMPUS benefits are payable in a specific case



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cannot be ascertained until a fully completed claim is submitted and adjudicated. And while it is truly unfortunate when an Advisor/Counselor provides misleading, incomplete or incorrect information, such errors are not binding on the Program.

#### RELATED ISSUE

Non-Availability of Military Ambulance. The Hearing File of Record indicates that the appealing party's son-in-law, a Military officer, requested a Military ambulance be sent from the Hospital which was to be the destination of the ambulance transfer. This was orally verified under oath at the Hearing by both the appealing party and his spouse. Rather than the request being denied for any reason (such as distance), the son-in-law was advised that a Military ambulance "was not available" and therefore a civilian ambulance should be obtained--which is what the appealing party did. Upon arrival at the Military Hospital, both the appealing party and his spouse observed a large parking area filled with Military ambulances. An inquiry was made of the Military Hospital officials as to why the appealing party had been advised no ambulances were available, when obviously there were. It was then learned that the problem was the lack of drivers who were all on leave due to the July 4th holiday rather than a shortage of ambulances. This is not acceptable. Regardless of a holiday, a Military hospital is expected to be able to continue to function and be responsive to the needs of Military beneficiaries. Correction of such nonperformance on the part of a Military hospital would usually be accomplished through referring the case back to the appropriate Military Department for action. However, due to the lengthy time this case has been under appeal, this was taken into account in determining this case should receive special consideration under CHAMPUS.

#### SUMMARY

This FINAL DECISION to reverse the initial denial and extend CHAMPUS benefits in this case in no way implies that the initial determination to deny CHAMPUS benefits was incorrect under the terms at the applicable Regulation (DoD 6010.8-R), or for that matter, that subsequent appeal decisions, including the

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Hearing Officer's RECOMMENDED DECISION, were incorrect. It simply reflects consideration of the special circumstances by the Principal Deputy Assistant Secretary of Defense (Health Affairs) in reaching a FINAL DECISION.

Further, the appealing party is advised that application of the spirit of Transitional Authority applies only to this specific appeal case and should not be construed as having any general application.

OCHAMPUS is directed to reimburse the appealing party for the Government's cost share for the 30 June 1977 long distance ambulance service. The original total charge by the German ambulance service was DM 1,254 which, at the exchange rate in effect at the time the ambulance transfer was made (DM.48 = \$1.00), equates to \$583.26. The appealing party, as a retiree, is entitled to reimbursement of 75% of the CHAMPUS-determined reasonable charge--in this case, \$437.45.

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Issuance of this FINAL DECISION is the concluding step in the CHAMPUS administrative appeals process.

SIGNED

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

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COORDINATION

**SIGNED**

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Peter A. Flynn, Captain, USN, MC  
Special Assistant for Professional  
Affairs, ODASD(HR&P) OASD(HA)

**SIGNED**

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Mr. Robert L. Gilliat  
Assistant General Counsel (M,H,PA)  
Office of the Secretary of Defense