



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

8 DEC 1980

HEALTH AFFAIRS

FINAL DECISION: Appeal
OASD(HA) Case File 20-79

The Hearing File of Record and the Hearing Officer's Recommended Decision, along with the Memorandum of Nonconcurrency from the Director, OCHAMPUS, on OASD(HA) Appeal Case 20-79 have been reviewed. The amount in dispute is approximately \$1,440.00. (Complete bills were not available in the Hearing File of Record.) It was the Hearing Officer's recommendation that the CHAMPUS Contractor's initial determination to deny benefits for the appealing party's participation in a cardiac exercise program should be reversed based on his view that the services were medically necessary and produced positive results.

After careful review of the Hearing File of Record and due consideration of the facts in this case as presented therein, the Principal Deputy Secretary of Defense (Health Affairs), acting as the authorized designee for the Assistant Secretary, does not accept the RECOMMENDED DECISION. It is the position of the Principal Deputy that the evidence in this case does not support the Hearing Officer's findings and rationale. This FINAL DECISION is, therefore, based on the facts contained in the Hearing File of Record (including the oral testimony) and supports the initial determination to deny CHAMPUS benefits for participation in a cardiac exercise program.

PRIMARY ISSUE(S).

The primary issue in dispute in this case is whether the program in which the appealing party participated was primarily an exercise program or whether it was a program of physical therapy. Other issues are whether the program constituted medically necessary treatment and whether services were primarily preventive in nature.

Army Regulation AR 40-121, applicable through 31 May 1977, authorized the payment of medical benefits for, "... procedures and types of care [not otherwise excluded] ... which are generally accepted as being part of good medical practice [treatment]" (Reference: Army Regulation AR 40-121, Chapter 5, Section 5-2)

Further, the law under which CHAMPUS operates (Chapter 55, Title 10, U.S. Code) precludes the extension of benefits for preventive services.

CHAMPUS Regulation 6010.8-R, applicable on and after 1 June 1977, contains the same general exclusions but is more specific in certain aspects that apply to this appeal than was the former regulation. First, the regulation defines Physiatry Services (i.e., physical therapy) as, "... the treatment of disease or injury by physical means such as massage, hydrotherapy or heat." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsection B.132). In the chapter on Basic Program benefits, under that section dealing with physical therapy, it states, "General exercise programs are not covered even if recommended by a physician." [emphasis added] This policy is further reinforced under the exclusions and limitations which states, "[excluded are] General exercise programs, even if recommended by a physician and regardless of whether or not rendered by an authorized provider." [emphasis added] Also excluded are "Services and supplies related to obesity and/or weight reduction..." and "... training, non-medical self care/self help training and any related diagnostic testing or supplies." (References: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section C. Subparagraph 3.j.(2); Subsection G.30. Subsection G.46; and Subsection G.48.)

The prior regulation defined necessary services 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] (References: Army Regulation AR 40-121, Chapter 1, Section 1-3).

The definition of medically necessary contained in the current regulation includes both the concept of "level of care" (i.e., could the service be rendered in a less sophisticated, less costly environment) and "appropriateness" of care (i.e., is it generally accepted treatment). In the exclusion and limitation section it further excludes services and supplies, "... not medically necessary for the diagnosis and/or treatment of a covered illness or injury ... " (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER III, Subsection B.14 and Subsection B.103; CHAPTER IV, Subsection G.1.)

The appealing party strongly asserted that the cardiac exercise program in which he participated constituted physical therapy and was medically necessary in the treatment of his long term heart condition. Nonetheless, it is the finding of the Principal Deputy Assistant Secretary of Defense (Health Affairs) that the initial determination to deny benefits was correct.

In order to ensure that the appealing party fully understands the bases upon which the initial denial is being upheld, each of the points raised by the appealing party are addressed in this FINAL DECISION.

1. Exercise Constituted a Program of Physical Therapy. It was claimed by the appealing party that the cardiac exercise program in which he participated was, in fact, a program of physical therapy and thus eligible for benefits under CHAMPUS. The Hearing File of Record revealed that no physical therapists or physiatrists were involved in the exercise program. Further, no massage, heat, light or water were used--i.e., the basic elements in physical therapy. Oral testimony presented at the hearing described the environment and equipment used in the exercise program to be identical to that found in a gym or health spa (such as exercycles). The only difference between an exercise program in a gym or spa, and the exercise program in dispute in this appeal was that it was conducted in a unit located in hospital, with nurses present instead of attendants, and included the use of monitor testing. This doesn't change the fact, however, that the program consisted primarily of general exercises (along with a diet and education program)--exercises identical to those which are routinely self-administered at home, or in any gym, or health spa. Physical therapy was not in anyway involved. Therefore, as a general exercise program, it does not qualify either as necessary (i.e., essential) care or treatment under the prior regulation. General exercise, regardless of how worthwhile, is also both generally and specifically excluded from CHAMPUS benefits under the current regulation. (References: Army Regulation AR 40-121, Chapter 1, Section 1-3(c) and Chapter 5 Section 5-2; CHAMPUS Regulation DoD 6010.8-R CHAPTER II, Subsection B.132. and CHAPTER IV, Section C, Subparagraph 3.j.(z))
2. Alternate to Bypass Surgery. The appealing party next claimed [at least by implication] that even if the regimen was primarily an exercise program, it still constituted medical treatment for his heart condition by reason that it was conducted as an alternative to bypass surgery. Personal statements by the appealing party contained in the Hearing File of Record indicated he had suffered from a heart condition since 1963--claiming two heart attacks. The dates of these events were not revealed, however. He also indicated that in 1976 he experienced chest pain and that his heart beat was erratic. No clinical documentation was submitted which confirmed these personal statements. Correspondence

from the attending physician did not imply the exercises were an alternative to bypass surgery. Rather, the attending physician indicated that the exercise and weight reduction regimen was "complementary" to the drug therapy he was administering to the patient. Therefore, no consideration can be given the assertion that the exercise was an alternative to bypass surgery. Further, even if it had been found that exercise was being pursued before proceeding with a bypass, the question of whether or not the cardiac exercise actually represented an alternative to surgery is essentially moot since the reason the exercise/diet program was undertaken is not at issue. The fact remains that exercise programs and weight loss regimens do not qualify for CHAMPUS benefits regardless of their merits, regardless of the environment in which they are administered, and whether or not they result in improving the general health of an individual. (References: Army Regulation AR 40-121, Chapter 5, Section 5-2; CHAMPUS Regulation DoD 60.8-R, CHAPTER IV, Section C, Subparagraph 3.j.(z); Subsections G.30 and G. 48.)

3. Medically Necessary: Ordered by a Physician. It was also claimed by the appealing party that because it was ordered by a physician, the exercise program was therefore medically necessary treatment and thus eligible for CHAMPUS benefits. The fact that this exercise and diet program was recommended by the attending physician was never in dispute. Further, it is acknowledged that the program may very well have produced beneficial results for the appealing party--as would be anticipated for any individual, with or without a heart condition, who undertook a program of structured exercise and weight reduction. We do not concur, however, that the exercise/weight reduction regimen constituted specific treatment. Further, the fact that a physician orders, prescribes or recommends that a patient pursue a certain course does not, in itself, make it medically necessary treatment. A physician in caring for his or her patient may, and properly so, advise and recommend in many areas beyond specific treatment. This is particularly true relative to encouraging changes in lifestyles--i.e., increased exercise, elimination of smoking, weight reduction, etc. That this is recommended by a physician does not automatically qualify for benefits any expenses incurred to accomplish such goals. Further, the issue becomes moot when such recommended regimen involves a service or supply excluded under CHAMPUS as are general exercise and/or weight reduction programs.

(References: Army Regulation AR 40-121, CHAPTER I, Section 1-3(c); CHAMPUS Regulation DoD 6010.8-R, CHAPTER III, Subsections B.14 and B.103; CHAPTER IV, Subsection G.1 and the "NOTE" at end of Section G; CHAPTER IV, Section C, Subparagraph 3.j.(2); and Chapter IV, Subsections G.30 and G.48.)

4. Health Education. One of the stated purposes of the program in which the appealing party participated is to promote health education. This is undeniably a worthwhile goal and could no doubt result in enhancing the quality of life for any individual. Nonetheless, this does not overcome the fact that expenses incurred in connection with self-training/health education activities do not constitute covered services under CHAMPUS, however meritorious or worthwhile the effort may be. Again, such services do not qualify as necessary (i.e., essential) care or specific treatment under the prior regulation and are specifically excluded under the current regulation. (Reference: Army Regulation AR 40-121, Chapter 1, Section 1, Section 1-3 (c) and Chapter 5, Section 5-2; CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Subsection 6.46.)
5. Preventive. The appealing party and his attorney-representative strongly denied that the exercise/weight reduction program constituted preventive services. It was their position that the regimen represented specific treatment of the appealing party's heart condition. The Hearing File of Records indicates two of the major goals and objectives of the cardiac exercise was to "Prevent incidence of further MI injury" and "Prevent occurrence of MI in cardiac prone patients." No where is it stated that the exercise, diet and educational activities represent specific treatment. This would belie the claim that the disputed services had as a primary thrust, treatment rather than prevention. Again, however, this begs the real issue--i.e., that general exercise, diet and educational activities are not covered. This exclusion applies regardless of how beneficial such a regimen might be and regardless of the environment in which it is administered. (References: Army Regulation AR 40-121, Chapter 1, Section 1-3 (c) and Chapter 5, Section 5-2; CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section C, Subparagraph 3.j(2), and CHAPTER IV, Subsections 6.30, 6.46 and 6.48).
6. Primarily General Exercise Program: Secondarily Weight Reduction. Despite the appealing party's claims to the contrary, the services provided by the cardiac laboratory was primarily general exercise (the same as those that can be, and routinely are, self-administered, at home, or in a gym or spa); and secondarily, it was a weight reduction

program. Participant education also constituted an integral part of the overall program. That the exercise and diet were recommended by a physician, or that the specific environment in which the services were provided was located in a hospital, does not change this finding. The fact remains the services in dispute were related totally to general exercise and a weight loss program. Such services do not qualify as essential medical care or specific treatment under prior Army Regulation AR 40-121 effective through 31 May 1977; and are both generally and specifically excluded under the current CHAMPUS Regulation DoD 6010.8-R.

SECONDARY ISSUES

Several secondary issues were surfaced during the appeal process which, it was asserted, supported special consideration to extend CHAMPUS benefits in this case.

1. CHAMPUS Advisor Misinformation. The appealing party claimed that a CHAMPUS Health Benefits Advisor had assured him that his participation in the exercise program at the cardiac laboratory would be covered under CHAMPUS. Since there is no documentation in the Hearing File of Record to support this claim, we have no way to verify it. The claim, however, is irrelevant. A major effort is made to train CHAMPUS Advisors so they are able to provide assistance and accurate information to beneficiaries, but any statement as to whether a specific service is covered under CHAMPUS still represents a personal opinion only. CHAMPUS Advisors are employees of the respective Services not OCHAMPUS or its agents (CHAMPUS Fiscal Intermediaries). They have no authority to make Program benefit decisions. While it is truly unfortunate when an advisor is guilty of providing misleading or inaccurate information, such errors are not binding on the Program. Whether or not CHAMPUS benefits are payable in a specific case cannot be ascertained until a fully completed claim is submitted and adjudicated. What is controlling in such initial claim determinations or in any subsequent appeal decisions, are the law and applicable regulations.
2. Success of Exercise Program. The appealing party and the cardiac laboratory generally endorsed the exercise/weight reduction program as being successful--i.e., resulting in an improvement in activity, lifestyle and reduction of symptoms. The Hearing File of Record does indicate a weight loss (with a decrease in the percentage of body fat), decreases in

total blood Lipids, Triglycerides and Chilomicrons and increased activity (exercise). The record is silent, however, as to actual heart function after participation in this program. There was no evidence submitted to indicate that the cardiovascular disease (for which the appealing party was under a physicians's care) had been retarded or reversed as the result of the exercise. Further, there was no evidence that the appealing party required less medication to support heart function or that those medications prescribed specifically for the anginal chest pains were no longer necessary. The attending physician, while stating there had been a "reduction in symptoms," did not describe those symptoms nor the degree to which they were reversed, nor did the physician indicate that the cardiovascular disease had been improved or eliminated. While this assertion apparently made a significant impression on the Hearing Officer, it is our finding that it must be concluded that the claimed "improvement" was general in nature--a predictable result that would be expected in any person, with or without a heart condition, who undertook a similar exercise/weight reduction program. Again, however, whether or not the program was successful is not at issue, since payment of CHAMPUS benefits is not limited to only those situations in which there is some degree of success or where a cure is affected. In fact, success is not a consideration in a specific case. Further, in this particular instance whether or not the exercise/weight reduction was actually treatment, and whether or not it was successful is not the issue. The issue is whether or not general exercise and weight reduction services, regardless of their purpose, are covered. Our finding is they are not. (References: Army Regulation AR 40-121, Chapter 1, Section 1-3 (c) and Chapter 5, Section 5-2; CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section C, Subparagraph 3.j.(2) and Subsections G.30. and G.48.)

- 3. Improved Lifestyle. It was also claimed by the appealing party and the cardiac center that the exercise/weight reduction program contributed to an improved lifestyle and thus [implying] benefits should therefore be extended. Again, that there was an improvement in the general health of the appealing party which may have permitted a more active life style, may very well have occurred. Again, this is not the issue under consideration. The matter to be determined in this appeal is whether the exercise/ weight reduction program qualifies as covered services under CHAMPUS. Again, the finding is that they do not. (References: Army Regulation AR 40-121, Chapter 1, Section 1-3 (c) and Chapter 5, Section 5-2; CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section C, Subparagraph 3.j.(2); and Subsections G.30. and G.48.)

4. Initial Claim(s) Paid. It was noted by the appealing party that the initial claim(s) related to the episode of exercise and weight reduction was paid. Although this could not be verified from the Hearing File of Record, there was anecdotal information that indicated this was indeed true. Notwithstanding that such an error may have occurred, it has no bearing on the FINAL DECISION in this case. While it is regretted if the appealing party was misled by such an error, once the error was discovered the appealing party was promptly advised. Further, the Program is not bound by errors that may have been made by its employees or those of its agents. An appeal decision must be based on the merits of the individual case, in compliance with the law and applicable regulations.

RELATED ISSUE

Monitoring Tests. Since CHAMPUS benefits were extended for the laboratory tests and electrocardiograms performed for monitoring purposes in connection with the exercise and weight reduction regimen, the services were not an issue in this appeal. For the record, however, our review indicates that extension of benefits for the monitoring tests was in error since they were related to a non-covered episode of care and were not performed for either a diagnostic or treatment purpose. CHAMPUS excludes all services and supplies related to non-covered care. Under normal circumstances recoupment action would be required. Since the managing agency for the Program already notified the appealing party that this would not be pursued, recoupment action will not be initiated.

SUMMARY

This FINAL DECISION in no way implies that participation in the exercise and diet regimen did not contribute to the appealing party's overall general health or that it did not improve his quality of life. It only confirms that general exercise and weight reduction programs, however meritorious and regardless of the environment in which they are provided, do not qualify for benefit consideration under CHAMPUS.

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Our review indicates the appealing party has received full due process in his 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)