



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

HEALTH AFFAIRS

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

Appeal of)
Sponsor:) OASD(HA) File 83-14
SSN:) FINAL DECISION

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 83-14 pursuant to 10 U.S.C 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the-ten-year old son of an active duty officer in the United States Air Force and was represented by his father. The appeal involves the denial of physical therapy services and metabolic/biochemical reassessments and consultations provided the beneficiary October 5, 1979, through April 14, 1980, at the Institute for Child Development. The billed charges for these services were \$995.00.

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 benefits not be allowed for the treatment rendered, which included neuromuscular/functional reduction (performed by a physical therapist) and metabolic/behavioral reassessment and consultations. The Hearing Officer found the care represented treatment of minimal brain dysfunction and/or a learning disability and is specifically excluded as a CHAMPUS benefit. The Director, OCHAMPUS, concurs in the Recommended Decision and recommends its adoption, as modified, as the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs). The modification recommended by the Director, OCHAMPUS, is to include within the period and services in issue all related care provided in preparation for the specific treatment originally in issue, as well as subsequent follow-up care. The Director also recommends CHAMPUS denial of all treatment in this case on the additional bases that the care was not medically necessary, included services related to a noncovered condition or treatment, and the services do not qualify as physical therapy. The Acting Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, concurs in the recommendation of the Hearing Officer to

deny CHAMPUS benefits and hereby adopts, with the Director's recommended modifications incorporated, the recommendation of the Hearing Officer as the FINAL DECISION.

The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) is therefore to deny CHAMPUS cost-sharing of laboratory charges, testing, neuromuscular functional reeducation, metabolic/biochemical reassessment and consultation, and follow-up care provided by the Institute for Child Development from August 16, 1979, through April 14, 1980, and on December 1, 1980. This decision is based on findings the care provided was not medically necessary in the treatment of a disease or illness, was related to a noncovered condition (i.e. minimal brain dysfunction and/or a learning disorder), and does not qualify as physical therapy. The amount in dispute for the care totals \$2,060.00 in billed charges.

FACTUAL BACKGROUND

The record in this appeal reflects the beneficiary was initially evaluated at the Institute for Child Development, New York, on August 31, 1979, as a result of his parents' concerns about poor academic achievement, high activity level, and occasional inappropriate behavior. Prior to the evaluation, laboratory testing including sugar tolerance, urinalysis and blood count were performed at Hospital, New Jersey. The billed amount for these services was \$90.00 of which \$90.00 was allowed by the CHAMPUS Fiscal Intermediary for New York, Blue Cross of Rhode Island, and \$32.00 was paid to the beneficiary after reduction for the patient's cost-share and deductible. The Institute's evaluation from August 31, 1979, through September 19, 1979, consisted of a history and a series of tests including developmental testing, cerebral testing, visual screening, extremity testing, coordination and functional activities, and biochemical metabolic review and nutrient analysis (which included hair analysis). Billed charges for these services totaled \$725.00 of which Blue Cross of Rhode Island eventually allowed \$725.00 and paid \$580.00 to the beneficiary.

Following this evaluation, a diagnosis of neuromuscular dysfunction and biochemical imbalances was made apparently based on such findings as poor body awareness, inadequate pencil grasp, inadequate ability to perform rapidly alternating movements, a diet high in sweets and low in protein and fruits, elevated copper levels and decreased magnesium and zinc in the hair, poor eye-hand coordination, and inadequate ability to easily fixate an object at varying distances. The report concludes specifically identifying the following problems:

- "1. A biochemical imbalance which can affect the ability to sustain concentration. A nutritional program has been outlined to help correct the problem.

2. Poor eye-hand coordination which can make writing difficult and stressful.
3. Inadequate visual-motor integration which can affect copying efficiency.
4. Poor binocularity skills which can affect the ability to do near point tasks for an extended time.
5. Evidence of stress in ocular-motor function which can contribute to fatigue in near point tasks.
6. The inability to easily change focus from near to far points which can reduce reading and copying efficiency.
7. Inadequate fine motor ability which can make writing difficult and stressful. This, in turn, can reduce a child's capacity for written expression as it can be physically tiring for him to record his thoughts."

Various treatment modalities were recommended including elimination of sweets from the diet, frequent (six times daily) feeding of protein, daily fruits and vegetables, and adopting specific "teaching strategies" including recopying poorly done papers, avoiding ditto sheets and cluttered work books, and frequent short periods of alternate activity to relieve visual fatigue. Under "sensorimotor recommendations" a program of exercise was proposed to be performed daily at home and monitored bi-monthly at the Institute. It was designed to

"... improve [the beneficiary's] bilateral function and to either reduce or eliminate visual problems, and thus improve overall function."

The exercise program proposed was implemented and the beneficiary was seen on twelve occasions at the Institute for neuromuscular/functional reeducation from October 5, 1979, through April 14, 1980. Frequency varied from three times per month during October, November, and December 1979 to once per month in January, February and April 1980. During this period, metabolic/biochemical reassessment and consultation was provided during six sessions. The appeal file does not reflect the exact nature of the neuromuscular/functional reeducation. The file does reflect the services were provided by a registered physical therapist and was assumed to constitute physical therapy. A CHAMPUS claim was submitted for this care in the amount of \$995.00. The fiscal intermediary allowed a total of \$408.00 and issued payment to the beneficiary for \$286.40, after deducting the patient's \$71.60 cost-share and \$50.00 annual deductible.

The neuromuscular/functional reeducation (physical therapy) was allowed for the first 60 days (\$300) of which \$288.00 was the reasonable charge allowance. Billed charges of \$400 for neuromuscular/functional reeducation services in excess of the CHAMPUS 60 day physical therapy general limitation were denied as representing services not authorized under CHAMPUS. It was these denied services that became the focal point for the present appeal.

The denied services included a reevaluation conducted on April 14, 1980, during which the Institute's report notes improvement in the areas previously said to be deficient. Subsequent to this care, another reevaluation was performed on December 1, 1980. The previous improvement in activities had sustained, and the beneficiary was discharged from the program. A CHAMPUS claim in the amount of \$250.00 was submitted for this care of which \$98.00 was initially allowed and \$38.40 paid to the beneficiary. The sponsor questioned this determination, and an additional \$50.00 was allowed and \$40.00 paid to the beneficiary. Summarizing these claims, the record reflects a total of \$2,060.00 was claimed for the entire program and \$976.80 was paid to the beneficiary.

A summary of the claims action by the fiscal intermediary for all related care is as follows:

| | Charge | Allowed | CHAMPUS Payment |
|--|-------------------|-------------------|------------------|
| Lab Test | \$ 90.00 | \$ 90.00 | \$ 32.00 |
| Evaluation | 725.00 | 725.00 | 580.00 |
| Metabolic/Biochemical Reassessment & Consultation and Neuromuscular/ functional Reeducation | 995.00 | 408.00 | 286.40 |
| Reevaluation | 250.00 | 148.00 | 78.40 |
| Total | <u>\$2,060.00</u> | <u>\$1,371.00</u> | <u>\$ 976.80</u> |

The partial denial of the claim for services October 5, 1979, through April 14, 1980, was appealed. The fiscal intermediary affirmed the initial determination upon both Informal Review and Reconsideration on the basis the record did not document the medical necessity of the physical therapy beyond the regulatory norm of 60 days. OCHAMPUS review was requested and additional information was submitted by the sponsor including a statement from the facility regarding the need for a six-month program of physical therapy. As the fiscal intermediary cost-shared the other claims associated with the care at the Institute, only the claim for physical therapy beyond 60 days was appealed to OCHAMPUS and therefore was the only claim in issue at that point in the appeal process.

OCHAMPUS referred the case for medical review by physicians associated with the Colorado Foundation for Medical Care. The reviewing physicians, specialists in pediatrics and internal

medicine, opined a six-month program of physical therapy was not medically necessary and questioned the need for a 60-day period. The OCHAMPUS First Level Review Determination upheld the fiscal intermediary decisions and denied coverage for the physical therapy beyond 60 days. The OCHAMPUS decision also found the entire program of physical therapy was not supported by available documentation as appropriate for the beneficiary's condition. The sponsor appealed and furnished additional information including copies of claims and explanation of benefits for the care prior and subsequent to the claim then in issue. This documentation included a letter dated February 17, 1981, from the attending physician on the issue of physical therapy stating:

"The basis for referral for physical therapy was established through the above test procedures which indicated the following problems:

1. inadequate visual motor integration.
2. inadequate kinesthetic integrity.
3. inadequate fine motor coordination.
4. inadequate figure-ground perception.
5. poor saccadic fixation of the eyes.
6. inadequate fusion and convergence.

A review of the developmental history established that problems were first noted by the parents when their son was two years of age. Head banging followed the child's visual-motor coordination. Using utensils was unusually difficult in that [the beneficiary] was a "spiller." Entry to school provided many frustrations related to performance. Although a verbally bright child, there were problems in the coordination and perceptual areas which made the acquisition of early basic skills very difficult. His inability to complete assigned work and the level of frustration experienced contributed to behavior problems.

In 1976, Ritalin was prescribed but was withdrawn after 3 weeks at the parent's request. Teacher reports at the time of the evaluation indicated a high activity level, impulsivity, failure to complete work, distractibility, a high level of frustration and a very poor grasp of spatial directions.

Performance in physical education activities was also poor; was habitually the last child chosen for a team because of his poor coordination.

Previous therapies had not been successful in resolving this young man's difficulties."

The sponsor waived a personal appearance before the Hearing Officer, and the case was submitted on the record. The Hearing Officer has submitted his Recommended Decision. All prior administrative levels of appeal have been exhausted, and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are (1) what services and CHAMPUS claims are in issue; and (2) were the services in issue medically necessary to diagnosis or treat a mental or physical illness, injury, or bodily malfunction which is covered under CHAMPUS.

Services in Issue

The CHAMPUS regulation, DoD 6010.8-R, chapter IV generally sets forth the scope of benefits covered under CHAMPUS. In section G., chapter IV, the Regulation specifically excludes from coverage: ". . . All services and supplies (including inpatient institutional costs) related to a noncovered condition or treatment; or provided by an unauthorized provider."

As set forth in the factual background, during the initial stages of the appeal, only the denial of neuromuscular/functional reeducation (physical therapy) services beyond 60 days was in issue. During the OCHAMPUS review, the metabolic/biochemical reassessments and consultations and neuromuscular function reeducation (physical therapy) for the first 60 days was questioned. All the charges for August 16, 1979, through September 19, 1979, had been cost-shared and partial payment had been made for the December 1, 1980, services. At the hearing, the OCHAMPUS position formally challenged the necessity of all related services provided from October 5, 1979, through April 14, 1980. The sponsor objected to the expansion of the services and claims in issue to include the paid portion of the October 5, 1979, through April 14, 1980, care. In his Recommended Decision, the Hearing Officer found a complete review was necessary to make an accurate determination and considered all the care provided October 5, 1979, through April 14, 1980. However, a complete review was not made by the Hearing Officer as the claims and services prior and subsequent to October 5, 1979, through April 14, 1980, were apparently not considered.

The record clearly evidences CHAMPUS claims were filed and paid for these services. All but the laboratory services were provided by the Institute. The services August 16, 1979, through September 19, 1979, were clearly diagnostic and formed the evaluation on which the therapy was undertaken. The care on December 1, 1980, is a reevaluation of the therapy. As such, these services are not only directly related to the physical therapy program but also constitute the same episode of diagnosis

and treatment. They cannot be logically separated from the therapy in issue, for if the therapy is not medically necessary or otherwise excluded from coverage, the diagnostic services and follow-up also fail the requirements for CHAMPUS coverage. Therefore, I find the appropriate services and claims in issue encompass all the care provided by the Institute for Child Development and laboratory testing performed at its request. The claims in dispute are inclusive of services received on August 16, 1979, through April 14, 1980, and December 1, 1980, with total billed charges of \$2060.00.

Medically Necessary

Under Department of Defense Regulation 6010.8-R governing CHAMPUS, chapter IV, A.1. defines the scope of benefits as follows:

". . . subject to any and all applicable definitions, conditions, limitations, and/or exclusions specified or enumerated in this Regulation, the CHAMPUS Basic Program will pay for medically necessary services and supplies required in the diagnosis and treatment of an illness or injury"

Medically necessary is defined as:

". . . the level of service and supplies (that is, frequency, extent, and kind) adequate for the diagnosis and treatment of an illness or injury Medically necessary includes concept of appropriate medical care." (Chapter II, B.104.)

Therefore, to constitute CHAMPUS covered services, the care must be classified as diagnosis or treatment for an illness or injury. The record in this appeal fails to meet this standard. Primarily, I fail to find a diagnosis of an illness or injury. Neuromuscular dysfunction and biochemical imbalances are symptomatic findings, not a recognized diagnosis of an illness or injury. The record does not reflect any neurological examination to support the treatment.

The program of physical therapy was implemented following evaluation in areas such as diet, body awareness, pencil grasp, and hair analysis (an experimental procedure except for heavy metal poisoning). I find these diagnostic tools to be unusual at best to determine the presence of an alleged neurological illness or injury. The medical reviewers opined physical therapy was not justified by the documentation and suggested significant improvement in function would be doubtful. While the previous OCHAMPUS Fiscal Intermediary claims denied were based on the 60 day limitation for physical therapy (see DoD 6010.8-R, chapter IV, C.3.j.), this provision is not relevant to the question of the overall medical necessity of the entire program including

physical therapy. The physical therapy, of course, must be related to a covered medical condition to be determined medically necessary.

The record poorly documents exactly what physical therapy was performed. It is described as neuromuscular/functional reeducation and was apparently a sensorimotor exercise program, including hand eye coordination exercises, designed:

"To improve [the beneficiary's] bilateral function and to either reduce or eliminate visual problems and thus improve overall function."

No further description of the therapy appears in the record, and no progress notes from the physical therapist are included in the record. Consequently, the record is unclear as to the mode of therapy employed in the treatment.

In summary, I find the record fails to document a covered diagnosis of an illness or injury, the actual treatment provided and, indeed, the basic medical requirement for the care. I therefore find the record does not establish the medical necessity of not only the physical therapy but also the diagnostic procedures and follow-up evaluations. Further, as the physical therapy is determined to lack medical necessity, all related care is excluded under DoD 6010.8-R, chapter IV, G.66. as services related to a noncovered treatment or condition. As such, the care provided by Institute for Child Development and attendant laboratory charges do not qualify for CHAMPUS cost-sharing.

Minimal Brain Dysfunction/Learning Disability

Under DoD 6010.8-R, chapter IV, G.32., services and supplies related to minimal brain dysfunction, organic brain syndrome, hyperkinesia, or a learning disorder are specifically excluded from CHAMPUS coverage. The sponsor has strenuously objected to the suggestion that the beneficiary had or was being treated for a learning disability. OCHAMPUS and the Hearing Officer, in his Recommended Decision, have noted the similarity of the beneficiary's symptoms to those qualifying as a learning disorder, but have properly not attempted to diagnose the beneficiary's condition. The Hearing Officer specifically noted no evidence had been presented by the sponsor that the beneficiary's condition did not fall into these excluded categories.

The record reflects the beneficiary was referred to the Institute specifically for poor academic performance and high activity level at school. Tests performed included gross motor, fine motor, reading, vocabulary, spelling, and arithmetic, for example. The attending physician described the high activity level as situational - associated with school resulting from inability to perform in school. The recommendations of recopying

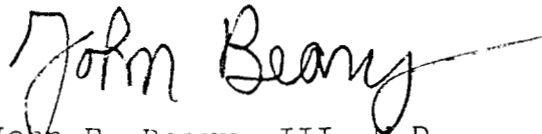
poorly done papers, avoiding ditto sheets, and cluttered work books also relate directly to academic performance. The above facts strongly indicate a learning disability, not a neurological disease or injury for which CHAMPUS benefits may be extended. Regardless, the treatment was directed to improving academic performance and to learning problems. The Hearing Officer found the care was related to a learning disability and excluded under CHAMPUS, and I adopt this finding. The care is excluded as services relating to a learning disability.

Physical Therapy

Under DoD 6010.8-R, chapter IV, C.3.j., physical therapy is a covered CHAMPUS benefit if related to a covered medical condition. As discussed above, the record in this appeal does not document a CHAMPUS covered illness or injury was present. Further, I have found the services were related to a learning disability and thereby excluded from CHAMPUS cost-sharing as a noncovered condition. Therefore, the physical therapy does not meet the basic qualification for coverage under CHAMPUS.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the care provided August 16, 1979, through April 14, 1980, and on December 1, 1980, at the Institute for Child Development and at Hospital was not medically necessary in the diagnosis and treatment of a illness or injury; is excluded under the regulatory provision excluding services related to a noncovered condition or treatment; is excluded as services related to a learning disability; and, therefore, is not authorized CHAMPUS cost-sharing. I further find the claimed physical therapy services do not relate to a covered medical condition and do not qualify as physical therapy. These findings result in a determination of overpayment by CHAMPUS in the amount of \$976.80 and the matter of potential recoupment is referred to the Director, OCHAMPUS, (or designee) for appropriate consideration under the Federal Claims Collection Act. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.



John F. Beary, III, M.D.
Acting Assistant Secretary