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 83-21
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in CHAMPUS appeal OASD(HA) case file 83-21 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party in this case is the beneficiary, the spouse of a retired officer of the United States Air Force. The beneficiary was represented at the hearing by her husband.

The appeal involves a question of CHAMPUS coverage of inpatient care provided the beneficiary from May 20, 1979, to June 9, 1979. The total hospital charge incurred by the beneficiary for these dates was $2,052.07. The CHAMPUS fiscal intermediary denied coverage for the last ten days of hospitalization (from May 31, 1979, to June 6, 1979) because the hospitalization and medical services were not medically necessary and above the appropriate level of care.

The hearing file of record, the tape and oral testimony presented at the hearing, the Hearing Officer's Recommended Decision and the Analysis and Recommendation of the Director, OCHAMPUS, have been reviewed. The CHAMPUS amount in dispute is $1,140.00. It is the Hearing Officer's recommendation that CHAMPUS coverage for inpatient care from May 31, 1979, to June 9 , 1979, be denied because it was above the appropriate level of care and not medically necessary. The hospitalization from May 20, 1979, to May 31, 1979, does qualify for CHAMPUS coverage. The Director, OCHAMPUS, concurs in the Recommended Decision and recommends its adoption as the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs).

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 payment for hospital care rendered from May 31, 1979, to June 9, 1979, and hereby adopts 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 approve CHAMPUS coverage for inpatient care from May 20, 1979, to May 31, 1979, and to deny coverage from May 31, 1979, to June 9, 1979.

The decision to deny coverage from May 31, 1979, to June 9, 1979, is based on the findings that such care was not medically necessary and was above the appropriate level of care.

FACTUAL BACKGROUND

This beneficiary required medical care and hospitalization on May 20, 1979, as a result of an accident which occurred on that day. The medical records disclose that on that date the beneficiary was assisting her husband in washing their pool when the beneficiary fell into the empty "fish pond" portion of the pool. As a result of this fall, the beneficiary injured her right lower extremity and apparently struck her face as well. Because of this accident she was taken to the emergency room. At the emergency room, x-rays were obtained of her face and lower right extremity. It is noted that there was no indication of her being unconscious at any time. The x-ray of the lower right extremity revealed a spiral oblique fracture of the right distal tibia and a spiral oblique fracture of the right proximal fibula. The neurovascular status appeared to be intact in the right lower extremity. The attending physician while in the emergency room performed a closed reduction of the tibia fracture using 1% Xylocaine local anesthesia. He noted that there appeared to be quite a bit of instability of the fracture and a lot of clicking occurred during the reduction and cast application. However, the post-reduction x-rays showed what appeared to be satisfactory position of alignment of the fracture. After the reduction of the fracture the beneficiary was admitted to the hospital for very close observation, further evaluation, and treatment.

After obtaining the medical history of this beneficiary, the attending physician noted that the beneficiary did have a past history of palatine tumor removal. He noted that the beneficiary had no other complaints at this time relative to her respiratory, cardiogastrointestinal or genitourinary systems. He noted in regard to the HEENT systems, the beneficiary did have some bleeding from the left nostril but this had subsided while the beneficiary was in the emergency room. He also noted that there was an abrasion on the left side of her face with a small laceration which had been Stri-stripped. The beneficiary was also given a tetanus booster in the emergency room.

A physical examination conducted by the attending physician noted that this was a well-developed, well-nourished, white female in moderate distress with pain in the right lower extremity. Her lungs were clear to auscultation, her heart normal, sinus rhythms with no audible murmurs, abdomen soft and flat with no probable masses or tenderness, and the bowel sounds were active. It was noted that in the right lower extremity there was a probable crepitant zone. The neural vascular status appeared to be intact in the right lower extremity. The physician admitted the beneficiary with the diagnosis of spiral oblique fracture right distal tibia and right proximal fibula, abrasion and contusion left side of face, and recent past history of palatine tumor removal.

The attending physician requested a examination by a consulting physician of the patient's face. This physician on examination noted that the patient's nose appeared entirely symmetrical. Palpitation, however, revealed what appeared to be some dyssymmetry in the nasal pyramid. The bone was somewhat tender. The physician noted that since the accident the beneficiary had difficulty wearing glasses because of the pain caused by the glasses exerting pressure on the area in the apparent or possible fractured nasal bone. Examination of the palate showed a lesion approximately 7 to 8 millimeters in circumference which was substantially smaller than the original palate hole. The clinical impression of this consulting physician was (1) past history of mixed tumor of the palate with history of wide resection, currently healing well, (2) history of the remote fracture of the nose with solid union at the present time. He recommended that manipulation of the nasal bone at the time was not advisable because the nasal bone may have to be broken down by open procedure in surgery a month or two later. The palate appeared to be closing off and could be expected to continue to do so.

A review of the hospital notes reveals that nothing occurred during that hospitalization that was out of the ordinary. The notes do indicate that the patient's bodily signs were taken on a regular basis, that the condition of her leg was checked on a regular basis, and that she was provided medication on a regular basis to control the pain. This medication included Premarin, Equaqestic, Mandelamine, Keflex, Pyrididеiem, Valium, and Indocin. There were a few incidents of note regarding this patient's hospital care. On May 21, 1979 the patient complained of burning while urinating and stated that when urinating she felt as if she did not empty her bladder completely. On May 24, 1979, the patient complained of a sudden sharp stabbing pain in the right midcalf. The pain caused the beneficiary to cry and become nauseous. On May 25, 1979, the beneficiary complained of pain in the ankle; and, finally, on May 27, 1979, the patient complained of discomfort in the right leg and was unable to get the leg into a comfortable position. Other than these incidents, the course of the hospitalization was generally uneventful. In fact, the nursing notes for the last 10 days indicate that the patient was resting comfortably, was in little pain, was generally in good spirits and was ambulatory.

During the course of hospitalization, the patient also received physical therapy; however, notes indicate the course of physical therapy was generally uneventful. In the beginning the beneficiary was unable to ambulate; but during the last 10 days of hospitalization she was able to ambulate and was progressing very well. Because of the complaints of dysuria the beneficiary was once seen by a consulting physician. It was the impression of the consulting physician that the beneficiary had had several problems in the past and that she had been put on Pyridiun while awaiting urine cultures. His impression was Cystitis. He noted that the follow up urine cultures revealed growth of E. coli with sensitivity test showing resistance to ampicillin. The

beneficiary was subsequently put on Tetracycline with indications of some continuing gradual improvement. His diagnosis was Cystitis, organism, E. coli.

The beneficiary was also reviewed by a radiologist. The notes of the radiologist revealed that the reduction was closing and the broken bones remained in fairly good alignment, that there was no significant shift in the position of the bones, and that good alignment was maintained. The discharge summary revealed that the final diagnosis was fracture, right distal tibia and proximal right fibula, Cystitis, history of mixed tumor of the palate with history of wide resection apparently healing well, history of remote fracture of the nose with the solid union. The fracture was reduced closed; however, the beneficiary did have problems because of the peroneal nerve irritation at the approximate fracture side of the fibula. Also she had some cystitis symptoms; however, urinary culture was negative. He noted that the patient was doing well and was ambulatory on crutches. The beneficiary was discharged to her home with Pyridum 100 mg. q.i.d. for a week and some Equagesic number 20 for muscle spasm.

CHAMPUS claims for the 20-day hospitalization (May 20, 1979, to June 9, 1979) were filed with the CHAMPUS fiscal intermediary, Blue Shield of California. The hospital and the beneficiary were informed that their claims for the last 10 days of hospitalization were denied based on medical review conducted by the fiscal intermediary. The basis for the denial was that the hospital care for the last 10 days was not medically necessary and was above the appropriate level of care. This decision was upheld during informal review and reconsideration levels of appeal by the fiscal intermediary.

During the course of these reviews the sponsor provided additional information from the attending physician to document the medical necessity for the extra 10-day period of hospitalization. In his statement the attending physician states:

> "It was felt that the patient should remain in the hospital for additional time due to a problem of peroneal nerve irritation at the proximal fracture sight on the right fibula and also due to the fact that the patient would not be able to manipulate herself at home because of her bedroom being located on the second floor."

Because the decision of the fiscal intermediary continued to deny the last ten days of the hospitalization, the sponsor requested OCHAMPUS review of the denial of benefits.

Prior to conducting a first level appeal review, OCHAMPUS referred the case to the Colorado Foundation for Medical Care for medical review and consideration. One of the reviewing physicians is a member of the American Board of Orthopedic

Surgery, has a medical specialty in orthopedic surgery, and is involved in direct patient care. The other reviewing physician has a specialty in occupational medicine, internal medicine and is involved in direct patient care. These two physicians, after review of the medical file, opined that the last ten days of inpatient care (May 31, 1979, through June 9, 1979) were not medically necessary or required in the diagnosis and treatment of this injury. This opinion was based on the lack of complications or other medical conditions which would justify an extended stay, including the nerve irritation at the fracture site. Further, they opined that the setting of an acute care hospital was not the appropriate level of care during the last ten days. The patient, in their opinion, should have been cared for at home with adequate help including a first floor bed, assistance with meals, assistance with mobility and other necessary activities. In addition, it was their opinion that continued inpatient care was provided, not because it was medically necessary, but because care in the home was unsuitable for this patient.

As a result of the OCHAMPUS review at the first level appeal it was determined that the last ten days of hospitalization (May 31, 1979, through June 9, 1979) did not qualify for CHAMPUS coverage because it was not medically necessary and was above the appropriate level of care. The sponsor, upon receipt of the CHAMPUS first level appeal decision, requested a hearing. In that request the sponsor provided additional information including x-rays and medication administration records. Because of this additional information it was decided to forward this new information to the medical reviewers from the Colorado Foundation for Medical Care for reconsideration. After reviewing the additional information, the reviewing physicians noted that there was no documentation in the records indicating the necessity for the extended length of hospital stay. They stated that the patient received parenteral Demerol IM for the first few days, but by May 31, 1979 the use of pain medications greatly decreased until the beneficiary received no pain medications for several days. Further the physical therapy records indicate the patient was receiving ambulation therapy by the third day. However, they did note several days where she refused to ambulate due to pain in her leg. They summarized as follows: "...we do not believe these records justify the length of this hospital stay from the standpoint of leg pain and spasm, administration of medication or physical therapy for ambulation. It remains our opinion that the patient could have been cared for at home with adequate assistance with ambulation, meals and other necessary activities."

A hearing was held by , Hearing Officer, on November 16, 1981. The Hearing Officer has submitted his Recommended Decision and all prior levels of administrative reviews have been exhausted. Issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS FACTS

The primary issue in this appeal is whether the inpatient care received at Hospital from May 31, 1979, through June 9, 1979, is authorized care under CHAMPUS. In resolving this issue it must be determined (1) whether the care rendered during the period in issue was medically necessary and (2) whether the care for the period in issue was provided at the appropriate level of care.

Medical Necessity

The Department of Defense Appropriation Act, 1979, Public Law 95-457, prohibits the use of CHAMPUS funds for "... any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury or bodily malfunction as assessed or diagnosed by a physician, dentist, [or] clinical psychologist...." This restriction has consistently appeared in each subsequent Department of Defense Appropriation Act.

The CHAMPUS regulation, DoD 6010.8-R, is consistent with the above statutory limitation by defining the scope of CHAMPUS benefits in chapter IV, A.1., as follows:

> "Scope of benefits. 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 illness or injury...."

The CHAMPUS regulation, DoD 6010.8-R, chapter II, B.104., defines "Medically Necessary" as:

> "...the level of services and supplies (that is frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury....Medically necessary includes the concept of appropriate medical care."

The Regulation also defines "Appropriate Medical Care" in chapter II, B.14., in part as:

> "a. That medical care where the medical services performed in the treatment of a disease or injury,...are in keeping with the generally acceptable norm for medical practice in the United States.

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c. The medical environment in which the medical services are performed is at the level adequate to provide the required medical care."

Finally, the CHAMPUS regulation specifically excludes from CHAMPUS coverage in DoD 6010.8-R, chapter IV, G.3.:

"Institutional Level of Care. Services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care."

Under the statutory and regulatory provisions cited above, the inpatient care in question must be found to be medically necessary (essential) for the care and treatment of a diagnosed condition.

The Hearing Officer examined the medical records, including the physicians' progress notes and the nurses' notes, and concluded that during the beneficiary's last 10 days of hospitalization she was ambulatory with crutches and that the care received consisted of medication management (oral) and monitoring of the status of her fracture and cystitis. The Hearing Officer found no evidence to support the appealing party's contention that her extended hospitalization was medically necessary because of the existence of a combination of physical and emotional circumstances. The Hearing Officer concluded that the effects of prior oral surgery, while noted in the records, were not cited in the physicians' progress notes as contributing to the need for extended hospitalization; that the beneficiary's expressed concern over the possibility of undergoing a pinning procedure if the fracture failed to properly heal is not mentioned in the hospital records as a basis for extended hospitalization; that the episode of cystitis was controlled by oral medication and was not sufficiently incapacitating to require extended hospital care; and that the pain related to the fracture was controlled by oral medication and could have been provided and monitored in the home rather than the acute hospital setting.

A thorough review of the hearing file of record leads me to agree with the Hearing Officer's conclusions and findings. The Hearing Officer recommends that the hospitalization for the period May 31, 1979, to June 6, 1979, be denied CHAMPUS coverage because it was not medically necessary in the treatment of this patient and was above the appropriate level of care. I agree with the Hearing Officer's recommendation and adopt it as my decision. It

appears that the patient could have been discharged to her home and received the necessary care on an outpatient basis. The Hearing Officer also found that the appealing party failed to present persuasive or conclusive evidence in opposition to the OCHAMPUS determination to deny CHAMPUS coverage of the last 10 days of hospitalization. Again I agree with the Hearing Officer. As a result of my review, I find that the record fails to document the medical necessity of the inpatient care at Hospital from May 31, 1979, to June 9, 1979. Specifically, I find the record documents that the patient, after the first ten days of hospitalization, was sufficiently ambulatory and able to function outside the controlled environment of an acute hospital setting. While this beneficiary may have required some treatment, inpatient care in this hospital for this period was not essential for the care of the patient or treatment of the patient's medical condition and was above the appropriate level of care. As opined by the reviewing physicians, the patient could have been cared for at home with adequate assistance with some ambulation, meals, and other necessary activities, and not retained in the acute hospital setting after the first 10 days (May 20, 1979 to May 31, 1979) of acute care.

Secondary Issue

Services Related to Non-Covered Hospitalization

As previously noted, DoD 6010.8-R, chapter IV, G.3., specifically excludes from CHAMPUS coverage,

> "Services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care."

Having determined that the beneficiary's last 10 days of hospitalization were not medically necessary and above the appropriate level of care, all services and supplies, including physician care, related to that period of hospitalization are also excluded from CHAMPUS coverage. The record is silent as to CHAMPUS processing of claims for services/supplies related to the last 10 days of hospitalization; therefore, the Director, OCHAMPUS, is directed to review the claims records and, if necessary, take appropriate action under the Federal Claims Collection Act to recover any erroneous claims payments.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the inpatient care at Hospital for the dates May 31, 1979, through June 9, 1979, be denied as the inpatient care was not medically necessary and was above the appropriate level of care. Therefore, the claims for hospitalization for this period are denied. The hospitalization and professional services for the period of May 20, 1979, to May 31, 1979, are a CHAMPUS benefit and may be

cost-shared under the program. Finally, the case is returned to the Director, OCHAMPUS for review and, if necessary, appropriate action under the Federal Claims Collection Act to recover any erroneous payments of services related to the medically unnecessary period of hospitalization. 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 Beary

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