

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

MAY 21 1982

H AFFAIRS

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

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of)
Sponsor:) OASD(HA) File 01-81
SSN:) FINAL DECISION

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs), in the CHAMPUS Appeal OASD(HA) Case File 01-81 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, Chapter X. The appealing party in this case is the beneficiary/sponsor. The Hearing File of Record, the tape of oral testimony presented at the hearing, the Hearing Officer's Recommended Decision and the Memorandum of Noncon-
currence from the Director, OCHAMPUS have been reviewed. The amount in dispute as discussed herein is approximately \$1,690.31. It is the Hearing Officer's recommendation that CHAMPUS deny coverage for the cardiac rehabilitation exercise program provided July 10, 1978 - August 13, 1979. Additional charges for x-rays, prescription drugs, office visits, and an ergometer (bicycle) were also submitted and are also in issue. The Director, OCHAMPUS concurs in the recommendation to deny benefits, but nonconcurrs in the Recommended Decision as written.

Under DoD 6010.8-R, Chapter X, the Office, Assistant Secretary of Defense (Health Affairs) may reject the Recommended Decision and issue a FINAL DECISION based on the appeal record. After due consideration of the appeal record, the Acting Assistant Secretary of Defense (Health Affairs) rejects the Hearing Officer's Recommended Decision. It is the finding of the Acting Assistant Secretary of Defense (Health Affairs) that the Hearing Officer's Recommended Decision does not reflect proper evaluation of the evidence or consideration of applicable regulations and fails to address the issues in this appeal.

The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) therefore is to deny CHAMPUS benefits for the cardiac rehabilitation exercise program during the period of July 10, 1978 - August 13, 1979 and the services attendant to the program; i.e., x-rays, stress tests and ergometer. This FINAL DECISION is based on the appeal record as stated above and a precedential decision of this office.

FACTUAL BACKGROUND

The beneficiary suffered an acute myocardial infarction in March, 1978. Following his discharge from the hospital, the attending physician advised the beneficiary to seek entrance to a cardiac rehabilitation exercise program at Marianjoy Rehabilitation Hospital, Wheaton, Illinois. The beneficiary began this program on July 10, 1978 and received sixty-nine "exercise sessions" through August 13, 1979. The appeal file reflects the program design was for 39 weeks duration, beginning with sessions of eighteen minutes three times a week and concluding with thirty to forty minute sessions every other week. Approximately sixty-four sessions were therefore planned for the beneficiary. During the rehabilitation program the beneficiary also received four stress tests and x-rays on three occasions at the rehabilitation hospital. A tenturi ergometer was also purchased by the beneficiary from the hospital. The exercise sessions consisted of graded treadmill, arm and leg ergometer and weight training exercises with EKG telemetry. The beneficiary continued the rehabilitation exercise program at home including walking and use of the ergometer.

The beneficiary submitted a CHAMPUS claim for the exercise sessions and one stress test during July 10 - September 13, 1978 in the amount of \$680.00. The CHAMPUS Fiscal Intermediary for Illinois, Wisconsin Physicians Service, issued a \$75.00 payment as the cost-share for the stress testing and denied the remaining charges for the exercise sessions. The partial denial was upheld upon informal review and reconsideration by Wisconsin Physicians Service. OCHAMPUS review, requested by the beneficiary, affirmed the prior determinations on the basis the documentation submitted did not establish the exercise sessions were other than general exercise excluded under DoD 6010.8-R. A hearing was requested by the beneficiary.

The beneficiary filed an additional CHAMPUS claim dated April 26, 1980 for exercise sessions from September 15, 1978 - August 13, 1979, three stress tests, and x-rays on three occasions at the Marianjoy Rehabilitation Hospital.

Included on this claim were charges for prescription drugs and an office visit, and x-rays by the attending physician. The total amount claimed was \$1,344.95; however, the attached medical bills indicate the actual amount to be \$1,532.06. Wisconsin Physicians Service initially allowed \$28.81 on the drug charges and denied the remainder of the claim. Charges incurred from September 15 - December 31, 1978, totaling \$791.75 were denied as untimely filed. Informal review by WPS determined the chest x-rays on February 2 and June 18, 1979, and the stress testing on February 7 and July 11, 1979 were payable. The remaining charges were denied. Reconsideration review by the fiscal intermediary affirmed this determination. Due to the pending hearing on the initial claim filed by the beneficiary, the partial denial of the April 26, 1980 claim was consolidated with the initial claim for purposes of the hearing. Therefore, no OCHAMPUS review of the April 26, 1980 claim was conducted. The hearing was held on September 30, 1980 at Fort Sheridan, Illinois. The hearing officer has issued his Recommended Decision. All levels of administrative appeal have been completed and issuance of a FINAL DECISION is proper. Subsequent to the hearing, the file reflects the beneficiary submitted an explanation of benefits form from Wisconsin Physicians Service noting a \$270.00 claim was submitted by Marianjoy Rehabilitation Hospital for which a \$187.11 payment was made. OCHAMPUS has advised this office, in transmitting the Recommended Decision, that contact with Wisconsin Physicians Services confirmed the payment of \$187.11 for an ergometer. As the ergometer was provided to the beneficiary by the hospital in connection with the cardiac rehabilitation program, I have determined this payment to be in issue in this appeal.

ISSUES AND FINDINGS OF FACT

The primary issue in this appeal is the medical necessity of the cardiac rehabilitation program provided the beneficiary by Marianjoy Rehabilitation Hospital from July 10, 1978 - August 13, 1979 and whether this program constitutes a general exercise program or is a covered physical therapy. As stated above, attendant services and supplies provided by the hospital in connection with the program include stress testing, x-rays and the ergometer. The prescription drugs, office visit and x-rays included on the April 26, 1980 claim will also be considered in this appeal. The claimed amount in dispute is \$1,690.31 and is determined as follows: sixty-nine exercise sessions at \$22 per session (\$1,518.00), four stress tests at \$130 each (\$520.00), the ergometer (\$270.00) three hospital x-rays at \$23.75 each (\$71.25), and \$102.81 for the office visit, chest x-rays and prescription drugs, totaling \$2,482.06.

As noted above, the claim dated April 26, 1980, included charges from September 15 - December 13, 1978. Under Department of Defense 6010.8-R, the applicable regulation in effect when the services were rendered, Chapter VII, D., CHAMPUS claims must be filed no later than December 31 of the year following the year in which the services were rendered. Therefore, to be timely filed, the services rendered in 1978 must have been filed on or before December 31, 1979. As the charges for September 15 - December 13, 1978 were not filed until after April 26, 1980, the charges for these services are untimely. As untimely, these charges totaling \$791.75 cannot be formally considered in this appeal; however, as the services are in continuation of the cardiac rehabilitation program, the denial of CHAMPUS coverage of the cardiac rehabilitation exercise program would logically include the September 15 - December 13, 1978 care. For purposes of the actual amount in dispute, the untimely charges of \$791.75 have been deducted from the total charges (\$2,482.06) leaving the amount in dispute at \$1,690.31.

MEDICAL NECESSITY

Under DOD 6010.8-R, Chapter IV, A.1., the CHAMPUS Basic Program will cost-share medically necessary services and supplies required in the diagnosis and treatment of illness or injury, subject to all applicable limitations and exclusions. Services which are not medically necessary are specifically excluded (Chapter IV, G.1.). Under Chapter II, B.104, medically necessary is defined 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."

To constitute a CHAMPUS covered service, the cardiac rehabilitation program must therefore be adequate for the diagnosis and treatment of illness or disease and correspondingly, constitute treatment of a disease or illness. The illness or disease of the beneficiary herein was a post-myocardial infarction occurring in March, 1978. The acceptance and efficacy of the treatment of post-myocardial infarction by the cardiac rehabilitation program must therefore be documented.

The Office, Assistant Secretary of Defense (Health Affairs) has previously considered the medical necessity of such programs. In a previous CHAMPUS Hearing Case, OASD(HA) 20-79, dated November 24, 1980, this office determined that the cardiac rehabilitation programs administered at the time services were rendered, were not medically necessary as the

exercise regimen was not documented in authoritative medical literature and recognized professional opinion as a generally accepted specific treatment for myocardial infarction. The exercise program in OASD(HA) case number 20-79 is similar to the program herein - monitored exercise under the supervision of nurses. The equipment utilized by the beneficiary in the present appeal - arm and leg ergometer, weight training and graded treadmill are similar to equipment in OASD(HA) case number 20-79. Therefore, the cardiac rehabilitation program furnished in this case (July 10, 1978 through August 13, 1979) suffers the same deficiencies as in OASD(HA) case number 20-79; the general acceptance and efficacy of the program in the treatment of post-myocardial infarction is not supported by medical documentation nor recognized professional opinion and authoritative medical literature contemporaneous with the dates of care.

The appeal file herein contains several peer review opinions from physicians associated with the Colorado Foundation for Medical Care. As noted by OCHAMPUS and the Hearing Officer, these opinions do vary on the medical necessity issue.

In the opinions dated April 18, 1978 and May 15, 1979 contemporaneous with the care provided to the beneficiary herein, the reviewing physicians clearly opined cardiac rehabilitation programs are, as yet, unproven in therapeutic value. It was recommended the program be considered a general exercise program at that time.

Subsequently, the same reviewing physicians opined in December of 1979 that the programs were medically necessary treatment because of the potential for restoring the patient to previous activity levels, although the evidence is not conclusive regarding reduction of mortality, morbidity or improvement of myocardial function.

Because of the contrary opinions, additional review was requested by OCHAMPUS. Two clarifications were furnished by the Colorado Foundation for Medical Care. These reports reveal a change in thinking by the reviewing physicians regarding the medical necessity of the program based on evidence which suggests the programs might contribute to a reduction in death in the first six months following on acute myocardial infarction and the increasing acceptance of the programs by the general medical community. However, the opinions clearly state cardiac rehabilitation programs remain an unproven modality, are not a standard of care in every community, and evidence does not support a reduction in heart disease as a result of the programs. The physicians cite improved function capacity to perform activities of

daily living with less fear, earlier return to work and increased understanding by the patient of the need for management of hypertension and stress as supporting the medical necessity.

While the Department of Defense recognizes individual improvement in quality of life may occur through cardiac rehabilitation programs, I must disagree with the December 1979 opinion of the reviewing physicians that potential improvement in the quality of life constitutes medical necessity under CHAMPUS. While these physicians may endorse programs they believe may assist individual patients, I am constrained by regulatory authorities to authorize benefits only for services which are generally accepted in the treatment of disease or illness and are documented by authoritative medical literature and recognized professional opinion. The evidence herein and the peer review opinions given at the time the services were rendered, disclose no evidence of the documented effectiveness of the exercise programs in the treatment of myocardial infarction (coronary heart disease); instead the file clearly indicates its unproven nature. As the April 18, 1978 and May 15, 1979 peer review opinions were issued immediately prior to and contemporaneously with the cardiac rehabilitation program provided the beneficiary in this appeal, these opinions represent the relevant medical opinions for the disputed program. Although the subsequent review opinions are at variance, the reviewers admit the absence of evidence to support their changed opinions. Therefore, I must conclude these programs are not medically necessary and follow the precedent set in OASD(HA) case number 20-79.

PHYSICAL THERAPY

The beneficiary's primary contention to support CHAMPUS coverage is that the program is physical therapy. Under DoD 6010.8-R, Chapter IV, B.3.g., physical therapy is a CHAMPUS benefit when provided by an authorized physical therapist; however, general exercise programs are excluded. Under DoD 6010.8-R, Chapter II, B.134, a "physical therapist" means:

"A person who is specifically trained in the skills and techniques of physical therapy (that is, the treatment of disease by physical agents and methods such as heat, massage, manipulation, therapeutic exercise, hydrotherapy and various forms of energy such as electrotherapy and ultrasound), who has been legally authorized

(that is, registered) to administer treatments prescribed by a physician and who is legally entitled to use the designation, "Registered Physical Therapist."

...."

Based on the evidence of record, I must conclude the cardiac rehabilitation program herein consisted primarily of activities which were not, at that time, widely accepted as therapeutic following a myocardial infarction. Therefore, consistent with my finding above that this program was not medically necessary, I further find that the program does not meet the definition of physical therapy (i.e., the treatment of disease by physical agents and methods) set forth in DoD 6010.8-R. CHAMPUS coverage of "therapy" can not be authorized unless the general acceptance and efficacy of the treatment at the time of care is established.

SECONDARY ISSUES

Related Charges

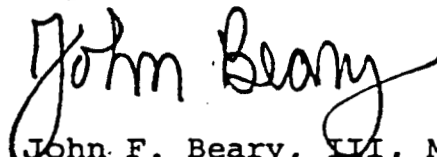
As detailed above, claims have been made by the beneficiary for medication, an office visit and x-rays by the attending physician, x-rays by the rehabilitation hospital and an ergometer. The medication, quinidine, is commonly prescribed for post-myocardial infarction and does not appear directly associated with the cardiac rehabilitation program. Similarly, the office visit to the attending physician and x-rays (\$55) are considered to be necessary follow up care for the beneficiary and CHAMPUS covered. From the record, it appears the office visit and x-ray services by the attending physician have not been cost-shared by CHAMPUS.

Charges for four stress tests (\$520.00) and three x-ray charges (\$71.25) were also submitted for which payment was made for one stress test in the amount of \$75.00. The appeal file further reflects a claim was submitted by the rehabilitation hospital for an ergometer (exercise bicycle) in the amount of \$270.00 for which Wisconsin Physicians Service issued a \$187.11 payment to the hospital. Under DoD 6010.8-R, Chapter IV, G.66., all services and supplies related to a noncovered condition are excluded from CHAMPUS coverage. As these services and supplies were provided by the hospital in connection with the noncovered cardiac rehabilitation program, I find these services and supplies

are also not covered by CHAMPUS and that the fiscal intermediary erroneously issued payment for the stress test and ergometer. As I find CHAMPUS payments were issued erroneously, the matter will be referred to the Office of General Counsel, OCHAMPUS for consideration of recoupment action under the Federal Claims Collection Act or offset against the unpaid claims for covered services, as appropriate.

SUMMARY

In summary, from the record in this appeal, I find the beneficiary's cardiac rehabilitation program not to be medically necessary in the treatment of post-myocardic infarction based on the lack of medical documentation, authoritative medical literature, and recognized professional opinion sufficient to establish the general acceptance and efficacy of the program at the time the care was received. I further find the program does not fit the definition of physical therapy under CHAMPUS and, therefore, does not qualify as covered physical therapy under CHAMPUS. The charges for the medication, office visit and x-rays by the attending physician are found to be medically necessary. OCHAMPUS is directed to process these claims for reimbursement of these charges subject to recoupment action on noncovered services erroneously paid. I additionally find the stress tests, x-rays, and ergometer provided by Marianjoy Rehabilitation Hospital to be noncovered expenses in accordance with the above. The appeal of the beneficiary is therefore denied. 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