



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

HEALTH AFFAIRS

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

8 JUN 1982

UNITED STATES DEPARTMENT OF DEFENSE

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| Appeal of |) | |
| |) | OASD(HA) File 82-02 |
| Sponsor: |) | |
| |) | FINAL DECISION |
| SSN: |) | |
| |) | |

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 82-02 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, Chapter X. The appealing party is the CHAMPUS beneficiary. The appeal involves the denial of 200 hours of private duty (special) nursing services provided the beneficiary on October 16, 1979 and December 13-24, 1979. The amount in dispute involves \$1,625.00 in billed charges. The hearing file of record, the tape of oral testimony and argument presented at the hearing, the Hearing Officer's Recommended Decision and the Memorandum of Concurrence from the Director, OCHAMPUS have been reviewed. It is the Hearing Officer's recommendation that the CHAMPUS decision to deny cost-sharing for the private duty (special) nursing services be upheld. The Hearing Officer found the services neither met the regulatory requirements for private duty (special) nursing nor were the services medically necessary. The Director, OCHAMPUS concurs and recommends adoption of the recommended decision 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 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 deny CHAMPUS payment for services provided to the appealing party by private duty (special) nurses on October 16, 1979 and December 13-24, 1979 as not being medically necessary and for failing to comply with regulatory criteria for CHAMPUS coverage of private duty (special) nursing services.

FACTUAL BACKGROUND

On October 16, 1979, the beneficiary underwent a myelogram at the Hospital for Special Surgery, New York, New York. She employed a private duty nurse for eight hours on October 16, 1979. The attending physician, Dr. _____, did not order the private duty nurse and no nursing notes are available for the care. On December 13, 1979, at the same hospital, the beneficiary had bilateral hemilaminectomies and disc excision at L4-5 with foraminotomies. The beneficiary was discharged on December 29, 1979. Private duty nurses were employed by the beneficiary during the twelve hour day shifts on December 14-24, 1979 and during the twelve hour night shifts on December 13-17, 1979. The Hospital for Special Surgery does not have an intensive care unit.

CHAMPUS cost-sharing of these services was denied by the CHAMPUS Fiscal Intermediary for New York, Blue Cross of Rhode Island, which affirmed its determination upon reconsideration. The first level appeal review by OCHAMPUS upheld the denial on the bases the services could have been provided by the hospital staff and did not meet the requirements of private duty nursing set forth in DoD 6010.8-R. The beneficiary appealed and requested a hearing which was held on June 25, 1981 at New York, New York before _____, Hearing Officer. The Hearing Officer has submitted her 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) whether the private duty (special) nursing provided on October 16, 1979 and December 13-24, 1979 met the specific requirements of DoD 6010.8-R and (2) whether the services were medically necessary.

PRIVATE DUTY NURSING

The Department of Defense Regulation governing CHAMPUS, DoD 6010.8-R, provides specific criteria for coverage of private duty (special) nursing. As defined by the Regulation private duty (special) nursing services means:

"... skilled nursing services rendered to an individual patient requiring intensive medical care. Such private duty (special) nursing must be by an actively practicing Registered Nurse (RN) or Licensed Practical or Vocational

Nurse (L.P.N or L.V.N), only when the medical condition of the patient requires intensified skilled nursing services (rather than primarily providing the essentials of daily living) and when such skilled nursing care is ordered by the attending physician." (DoD 6010.8-R, Chapter II, B.142).

The extent of benefits for private duty nursing is specified in DoD 6010.8-R, Chapter IV, C.3.o., in part, as follows:

"Private Duty (Special) Nursing. Benefits are available for the skilled nursing services rendered by a private duty (special) nurse to an individual beneficiary/patient requiring intensified skilled nursing care which can only be provided with the technical proficiency and scientific skills of an R.N. The specific skilled nursing services being rendered are controlling, not the condition of the patient nor the professional status of the private duty (special) nurse rendering the services.

- (1) Inpatient private duty (special) nursing services are limited to those rendered to an inpatient in a hospital which does not have an intensive care unit....
- (2) The private duty (special) nursing care must be ordered and certified to be medically necessary by the attending physician.
- (3)
- (4) Private duty (special) nursing care does not, except incidentally, include services which primarily provide and/or support the essentials of daily living, or acting as a companion or sitter.
- (5) If the private duty (special) nursing care services being performed are primarily those which could be rendered by the average adult with minimal instruction and/or supervision, the services would not qualify

as covered private duty (special) nursing services regardless of whether performed by an RN, regardless of whether or not ordered and certified to by the attending physician, and regardless of the condition of the patient.

(6) In order for such services to be considered for benefits, a private duty (special) nurse is required to maintain detailed daily nursing notes, whether the case involves inpatient nursing service or nursing services rendered in the home setting.

...."

As specified in the above regulatory authorities, the private duty nurses services must be skilled nursing services rendered to a patient requiring intensified skilled nursing care which can only be provided with skills possessed by a registered (or other qualifying) nurse. The services must also be ordered by a physician, and certified to be medically necessary. Detailed nurses notes are required.

As found by the Hearing Officer, the private duty nursing care provided on October 16, 1979 was not ordered by a physician or certified to be medically necessary. The record does not reveal any documentation of such an order, and, in fact, the attending physician advised the patient to do what she wanted. The beneficiary testified at the hearing she wanted the nurse and personally contacted and hired her. Further, no nurses notes appear in the record and apparently none were made by the nurse for the October 16, 1979 services. The beneficiary testified that the private duty nurse assisted her in keeping her head down (prone) after the myelogram and fed her in the prone position. She detailed her past unpleasant experiences during hospitalization which appear to be the primary reason for her employment of a private duty nurse on October 16, 1979. Finally, peer review by physicians of the Colorado Foundation for Medical Care opined the beneficiary did not require intensified skilled nursing care following the myelogram. I find these services do not qualify as intensified skilled nursing care requiring the skills of a registered nurse, but consist of services which support the essentials of daily living and, companion services. In addition, such services could have been rendered by the average adult with minimal instruction and/or supervision. Therefore, I concur and adopt the finding of the Hearing Officer that the services provided on October 16, 1979 do not meet the requirements of DoD 6010.8-R as (1) intensified services (2) ordered by a physician and (3) for which detailed nurses notes were made. The services of October 16, 1979 are therefore not CHAMPUS benefits.

The Hearing Officer has made a detailed analysis of the private duty nursing services provided during December 13-24, 1979. She observed that the notes disclosed the medications given, that vital signs were taken, that the beneficiary was turned at regular intervals, and the patient complained of pain and general discomfort. The notes reported, for example, "dressing was observed dry and intact, - Foley Catheter draining well," and "Foley Catheter maintained" and patient "resting comfortably - complains only when moved," and patient was "depressed," and "needs constant attention and reassurance about almost everything." The Hearing Officer found the care did not consist of intensified skilled nursing care; rather, the care primarily consisted of services which provided or supported the essentials of daily living or services of an individual acting as companion or sitter and could have been rendered by the average adult with minimal instruction. The record supports these findings and I adopt them in this FINAL DECISION. The nurses also fed, bathed, turned the beneficiary every hour and assisted her in toilet functions. The beneficiary testified that staff nurses were excellent and did promptly administer her medications when the private duty nurses were not present. The attending physician provided statements for the record advising the private duty nurses were ordered because of the degree of pain post-operatively together with a more prolonged ileus than usual. He stated the beneficiary required prolonged use of intravenous therapy, frequent turning, and was unable to care for herself in terms of toilet functions. He further responded to a post-hearing question posed by the Hearing Officer that he ordered private duty nurses for all patients with the same surgery as the beneficiary and that intensive nursing care was performed only in the recovery room in the immediate hours following surgery. The record reveals these intensive nursing services were provided by the hospital nursing staff in the recovery room as the hospital does not have an intensive care unit.

As found by the Hearing Officer, there is nothing in the record to indicate these routine services performed by the private duty nurses could not have been provided by the hospital staff. The beneficiary testified she does poorly in the hospital and hoped to have a more rapid recovery as a result of the care provided by the private duty nurses. She related that during the first five days of her hospitalization she was unable to reach or push the call button for the floor nurses. As noted by the Hearing Officer, this is the type of services that could have been provided by an adult companion if there was no way to position the call button for her use.

As stated above, the physicians associated with the Colorado Foundation for Medical Care issued a peer review opinion on the medical records in this appeal. In the opinion of the reviewing physicians, (specialists in internal medicine

and orthopedic surgery), (1) there was no indication a private nurse was required to perform services which could have been provided by the hospital nursing staff, and (2) the nurses acted primarily as companions since the required skilled nursing services could have been provided adequately by the hospital general nursing staff. Many of the services could also have been rendered by the average adult.

Based on the above testimony, documentation and opinion, I concur in and adopt the findings of the Hearing Officer that the private duty nurses services provided on December 13-25, 1979 were not intensified skilled nurse care, primarily consisted of services which provided or supported the essentials of daily living or acting as a companion, most of which could have been rendered by the average adult with minimal instruction; and could have been provided by the hospital nursing staff. Further, as the cost of the hospital nursing staff is included in the hospital daily rates for the inpatient care previously paid by CHAMPUS, and since the services provided by the private duty nurses could have been provided by the staff nurses, to authorize payment of the private duty nursing charges would essentially result in double payment for the services. Therefore, I find the services do not meet the requirements of DoD 6010.8-R, cited above and are not a CHAMPUS benefit.

MEDICAL NECESSITY

Under DoD 6010.8-R, Chapter IV, A.1., the CHAMPUS Basic Program provides cost-sharing for 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 (DoD 6010.8-R, Chapter IV, G.1). Under DoD 6010.8-R, 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"

As the services provided by the private duty nursing could have been provided by the staff nurses, I find that performance of these services by the private duty nurses were not medically necessary in the treatment of an illness or injury. As above noted, to determine otherwise would result in double payment for performance of these ordinary nursing services. I also find that the services of the private duty nurses were not medically necessary because the primary character of the services involved supporting the essentials of daily living and acting as a companion.

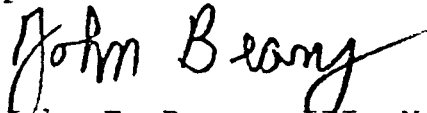
SECONDARY ISSUES

Reasonable Charge Determination

The appeal file reflects the appealing party questioned the CHAMPUS payment for the surgical charges of Dr. Jacobs. As the CHAMPUS claims payment methodology is specified by law and regulation, the allowed (reasonable) charge for services is not subject to appeal within the CHAMPUS appeals system. The appeal file further reflects OCHAMPUS investigated the allowance for the surgery and determined an additional allowance of \$188.00 was due on the billed charge of \$2,500.00 for a total CHAMPUS payment of \$1,496.00. As the appealing party has been advised of the additional payment, no further consideration of this issue is required.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the private duty nursing services provided October 16, 1979 and December 13-25, 1979 do not qualify as private duty nursing under the applicable regulatory authorities and were not medically necessary. Therefore, the claims for private duty nursing on the dates in issue and the appeal of the beneficiary are 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