



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

21 DEC 1982

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT SECRETARY

OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of)	
)	OASD(HA) File 82-09
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 82-09 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 cost-sharing for outpatient group therapy, individual counseling and psychological testing provided the beneficiary at the Cancer Counseling and Research Center, Ft. Worth, Texas from June 9 through June 19, 1980. The amount in dispute involves billed charges of \$1,900.00. The Hearing File of Record, the tape of oral testimony and argument presented at the hearing, the Hearing Officer's Recommended Decision and the Recommendation of the Director, OCHAMPUS, have been reviewed. It is the Hearing Officer's recommendation that the OCHAMPUS First Level Appeal decision denying cost-sharing be affirmed. The Hearing Officer found the services were not medically necessary and were not provided by an authorized CHAMPUS provider. The Director, OCHAMPUS concurs in this 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 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 coverage for the outpatient services provided by the

beneficiary at the Cancer Counseling and Research Center from June 9 through June 19, 1980. The decision to deny cost-sharing of the outpatient care is based on the findings that the care was not medically necessary and not provided by an authorized provider.

FACTUAL BACKGROUND

The beneficiary attended outpatient group therapy sessions at the Cancer Counseling and Research Center, Ft. Worth, Texas from June 9 through June 19, 1980. A non-participating CHAMPUS claim was filed by the beneficiary in the amount of \$1,900.00 for thirty-seven hours of group therapy, psychological testing physical examination and one hour of individual counseling. The claim form described the condition being treated as malignant melanoma and the diagnosis was listed as transient situational disturbance.

The appeal file indicates this diagnosis of malignant melanoma was first made at the Malcolm Grow USAF Medical Center in January of 1978. A statement from the Chief, Hematology/Oncology, Malcom Grow USAF Medical Center, dated June 2, 1980, states that the beneficiary had incurable malignant melanoma which; at that time, involved the right neck and upper chest; the locally invasive tumor had progressed relentlessly despite all therapy and the prognosis for prolonged survival is very poor despite the patients general well-being.

Documentation submitted with the claim indicates the first day of treatment at the Center consisted of psychological testing and interpretation and a physical examination. The second through the ninth days consisted of five hours of group therapy per day for seven days and two hours on one day. The program concluded on the tenth day with an individual counseling session. No physical examination report nor therapy notes were submitted. Standard description of the program was submitted characterizing the program as psychotherapy conducted under the supervision of Radiation Oncologist.

The itemized bill notes the services were rendered by or under although a January 18,
 ✓ the direct supervision of 1982 letter from the Cancer Counseling and Research Center
 ✓ advised the sessions were conducted by and other
 allied health professional providers. The sessions were described as physicals, massages, intakes and group sessions involving, among other processes, exercise, play, imagery process, family systems, drama triangle, open processes, death and goal assignments.

The CHAMPUS Fiscal Intermediary for the State of Texas during 1980, Mutual of Omaha Insurance Company, allowed \$270.00 of the \$1900 claim as follows: \$50.00 for the physical examination, \$100.00 for the psychological testing, and \$120.00 for the group sessions. Payment was issued to the beneficiary in the amount

of \$165.00 after deduction of the beneficiary deductible and cost-share. The beneficiary appealed the partial denial by Mutual of Omaha which upon informal review affirmed the initial determination on the basis the applicable CHAMPUS regulation, DoD 6010.8-R, limited psychotherapy to 1½ hours per day. The appeal was automatically referred for reconsideration review. This review resulted in an additional allowance of \$120.00 based on a finding of a crisis situation. After application of the cost-share, an additional payment of \$90.00 was made to the beneficiary.

The beneficiary appealed to OCHAMPUS and additional documentation was obtained from the Cancer Counseling and Research Center, consisting of the psychodiagnostic evaluation by According to, the beneficiary's profile suggested "normal functioning in most areas" and states "there are no clear obvious areas of dysfunctioning." The OCHAMPUS First Level Appeal decision reversed the prior decisions as to the finding of crisis intervention and further found the entire period of care from June 9 to June 19, 1980 was not medically necessary based on the lack of documentation in the file. The beneficiary was also advised the applicable regulation does not provide for payment of transportation and room and board (motel) which was previously requested by the beneficiary although no claim had been filed. The beneficiary appealed and requested a hearing. Additional information was sought by the beneficiary; the provider advised him "we do not have time to right (sic) individual therapy notes"

The hearing was held on April 5, 1982, in Philadelphia, Pennsylvania before, Hearing Officer. All prior levels of administrative review have been exhausted and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

Medically Necessary

Under DoD 6010.8-R, Chapter IV A.1., the Department of Defense Regulation governing CHAMPUS, 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 (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 Medically necessary includes the concept of appropriate medical care."

Appropriate medical care is defined in DoD 6010.8-R, Chapter II, B. 14, in part as:

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

Therefore, to constitute a CHAMPUS covered service, the outpatient group therapy and other services provided the beneficiary by the Cancer Counseling and Research Center must qualify as adequate for the diagnosis and treatment of a disease or illness and in keeping with generally accepted norm for medical practice in the United States. Herein, the condition being treated is stated on the CHAMPUS claim form as malignant melanoma. A mental disorder of transient situational disturbance is listed as the diagnosis by the attending physician. The records in this appeal must establish for CHAMPUS cost-sharing that the group therapy is adequate (appropriate) treatment for either malignant melanoma or the transient situational disturbance.

The treatment of the mental disorder will be examined first. The only documentation in the record related to the mental disorder (the psychodiagnostic test) states the beneficiary was functioning normally in most areas and had no clear areas of dysfunction. No therapy notes were provided and according to correspondence from the provider, were not recorded as the provider did not have the time to write individual therapy notes. Further, no progress notes or treatment summary were made by the provider. No documentation was submitted by the attending physician, a radiation oncologist, to support the diagnosis. At the hearing, the beneficiary testified he did not believe he had a mental disorder, and from his testimony, it is apparent he has adjusted remarkably to his disease and appears to be functioning normally.

The OCHAMPUS Medical Director, a psychiatrist, reviewed the medical records in this appeal and opined, the appeal file does not justify the diagnosis and offers no insights into elements of the Program that would be considered efficacious, medically necessary or medically appropriate treatments. In view of the lack of documentation, the Hearing Officer found no evidence the beneficiary was suffering from a mental disorder. I agree and adopt the Hearing Officer's finding on this issue. If no mental disorder was present, then of course, psychotherapy would not constitute medically necessary services.

Initially there was an issue of whether a crisis situation existed which would result in the cost-sharing of psychotherapy. In view of my finding that psychotherapy was not documented as medically necessary, no finding is required on this issue.

At the Hearing, the beneficiary contended the care received at the Cancer Counseling and Research Center was treatment for cancer. He defined medically necessary as whatever was necessary for him to combat his disease. He believed the treatment successful because he outlived the predictions for the course of his disease and is able to combat the cancer because he feels better. The beneficiary also submitted two publications for the record. These publications, Getting Well Again and Stress, Psychological Factors and Cancer, authored and compiled by the attending physician in this appeal, state the philosophy of the Cancer Counseling and Research Center's treatment program as being participation of the patient in creating his own level of health. The apparent theory supporting the treatment is that the patient can affect the cancer by his own beliefs, feelings and emotions. The group therapy attended by the beneficiary illustrates this approach. Sessions consisted, in part, of "imagery" in which the beneficiary testified the patients imagined radiation reducing the cancer without harm to the body; "massages" in which the patients gave massages to each other and the value of massages in reducing stress was discussed; "play" in which the importance of relaxation was discussed; "exercise" where the importance of physical exercise was discussed; "drama triangle" where forming relationships relating to the concepts persecutor, victim and rescue was discussed; "goals" where the importance of establishing life goals was discussed. The sessions entitled "open process" included discussion of the above subjects according to the beneficiary. The thrust of the entire program, as the beneficiary further testified, was to essentially practice the use of emotions to control cancer. It is this care that the beneficiary contends was medically necessary in the treatment of his cancer.

The opinion of the OCHAMPUS Medical Director referred to above, attached an article from the Cancer Journal for Clinicians entitled "Unproven Methods of Cancer Management, O. Carl Simonton, M.D." This report, a summary of the files of the American Cancer Society concludes the Society has no evidence that Dr. Simonton's methods result in objective benefit in the treatment of cancer. The article concludes that there is no scientific evidence that psychological and psychosomatic factors will alter the course of the disease. As is noted by the Hearing Officer, the article and the opinion of the OCHAMPUS Medical Director are the only evidence of record professionally evaluating the Center's program. Based on the above evidence, the Hearing Officer found the services were not medically necessary in the treatment of cancer. I concur and adopt this finding. The file does not document the effectiveness of this

program in the treatment of cancer. The program has been evaluated by the American Cancer Society and no evidence was found to support its effectiveness. The unusual approach to cancer treatment of the Center must be documented prior to CHAMPUS cost-sharing. In absence of that documentation, CHAMPUS declines to cost-share this care.

Included with the definition of medically necessary is the concept of appropriate medical care, defined above. As this treatment has not been documented to be effective in the treatment of cancer, and not accepted by recognized authority, I also find the treatment is not in keeping with the generally accepted norm for medical practice in the United States. The appeal record reveals services of a physical examination and a psychological test were also provided the beneficiary in addition to the group sessions. Under DoD 6010.8-R, chapter IV, G.66, all services and supplies relating to noncovered treatment are excluded from CHAMPUS. As these services were attendant to the group sessions and a part of the overall program, I find the physical examination and psychological test are excluded under the cited regulatory provision.

Therefore, it is the finding of the Acting Assistant Secretary of Defense (Health Affairs) that the services provided the beneficiary at the Cancer Counseling and Research Center have not been documented to constitute psychotherapy for a mental disorder nor medically necessary care in the treatment of cancer. While I fully understand the position of the beneficiary that he must seek out and utilize every available potentially helpful program in combating his disease, I must determine CHAMPUS coverage solely within the confines of the statutory and regulatory authorities. Treatment regimens which have not been documented to be effective in the treatment of disease are not approved for CHAMPUS cost-sharing.

Counseling

Under DoD 6010.8-R, Chapter IV, G.40, counseling and services of Counselors, except marriage and family counselors, are excluded from CHAMPUS coverage. The Hearing Officer found the sessions fell under this excluded category based on the stated purpose of the sessions to help patients and their families deal more effectively with emotional stress and problems associated with cancer.

As the sessions do not qualify as psychotherapy in the absence of a documented mental condition, the services would appear to be properly classified as counseling in view of their stated purpose. The goals of alleviating family ignorance, anxiety, fear and tensions associated with cancer through education of the patient and communication between the patient, family and physician can certainly be helpful. As described above, the sessions appear only as nonmedical discussion of topics of

interest to cancer patients and their families. Therefore, it is the finding of the Acting Assistant Secretary of Defense (Health Affairs) that the claimed services involve a counseling program and are excluded from CHAMPUS coverage under the above cited regulation provision.

Authorized Provider

Under DoD 6010.8-R, Chapter VI, C and Chapter IV, G.66, CHAMPUS cost-sharing is limited to services provided by designated classes of providers. The record herein is unclear as to who provided the services in this appeal. While the record reflects [redacted] is an authorized CHAMPUS provider, who may bill on a fee for service basis, the Cancer Counseling and Research Center and the other named individuals conducting the sessions are not authorized providers.

Various records and correspondence from the Cancer Counseling and Research Center indicate [redacted] provided the care, that the sessions were conducted under his supervision, or that [redacted] and other individuals provided the care. The beneficiary testified [redacted] conducted all morning sessions and others conducted at least some of the afternoon sessions. The claim form lists the Cancer Counseling and Research Center as the provider. Finally, the beneficiary testified he paid the Center, not [redacted] for the services.

Based on this information, the Hearing Officer concluded the services were provided by the Center and not by [redacted] individually. While OCHAMPUS attempted on several occasions to obtain definite information, the responses of the Center are confusing at best. The evidence supports the Hearing Officer's conclusion based on findings that persons other than [redacted] provided part of the services, [redacted] did not bill on a fee for service basis, and the beneficiary paid the center the costs billed for the counseling program.

As the Center is not an authorized provider according to the record, I must agree with the Hearing Officer and conclude the file does not document the services were provided by an authorized provider. Therefore, it is the finding of the Acting Assistant Secretary of Defense (Health Affairs) that the claimed services were not furnished by an authorized CHAMPUS provider and can not be cost-shared by CHAMPUS.

SECONDARY ISSUES

Recoupment

The appeal file reflects a total of \$255 was paid to the beneficiary for a physical examination, psychological testing and group psychotherapy. As I have found the program to be not medically necessary nor appropriate medical care and provided by

an unauthorized provider, the payments to the beneficiary were erroneous. I am referring the potential recoupment of these funds to the Office of General Counsel, OCHAMPUS for appropriate action under the Federal Claims Collection Act and implementing guidelines.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the outpatient services at the Cancer Counseling and Research Center from June 9 through June 19, 1980 were not medically necessary nor appropriate medical care, and were not performed by an authorized CHAMPUS provider. I also find the services constitute counseling services which are specifically excluded under CHAMPUS. Therefore, I find CHAMPUS cannot cost-share these services. In view of the erroneous payments, I direct OCHAMPUS to refer the matter of potential recoupment to the Office of General Counsel, OCHAMPUS for consideration of recoupment action. 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