ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

HEALTH AFFAIRS

JAN 6 1983

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	OASD(HA) Case File 80-03
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 80-03 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the beneficiary, represented by the CHAMPUS sponsor. The appeal involves the question of CHAMPUS coverage of inpatient care provided the beneficiary from July 18, 1976 to September 8, 1976. The total hospital charge incurred by the beneficiary was $5,884.85, of which $1,395.11 for the last twelve days of hospitalization was denied coverage by the CHAMPUS fiscal intermediary as involving an inappropriate level of care and care which was not medically necessary.

The Hearing File of Record, the tape of oral testimony and argument presented at the hearing, 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 the denial of CHAMPUS cost-sharing for inpatient care from August 28, 1976 to September 8, 1976 be upheld on the basis of medically inappropriate level of care. The Director, OCHAMPUS, concurs in the Hearing Officer's Recommended Decision as it relates to the last twelve days of hospitalization; however, the Director, OCHAMPUS further recommends that the entire fifty-two day inpatient episode from July 18, 1976 to September 8, 1976 be denied CHAMPUS coverage on the basis the inpatient care was not medically or psychologically necessary and the inpatient care was primarily custodial/domiciliary and above the appropriate level of care.

The Acting Assistant Secretary of Defense (Health Affairs) after due consideration of the appeal record, the recommendation of the Hearing Officer and the Director of OCHAMPUS, makes the following FINAL DECISION.

The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) is to deny the CHAMPUS cost-sharing of inpatient hospitalization at Overlake Memorial Hospital from July 18 through September 8, 1976. This decision is based on findings the care provided was not medically or psychologically necessary. Further the hospitalization for this period was custodial/domiciliary and above the appropriate level of care.

FACTUAL BACKGROUND

The beneficiary was admitted to Overlake Memorial Hospital, Bellevue, Washington on July 18, 1976, with a diagnosis of Anxiety Neurosis, severe. Although the records are not complete, it appears the patient was hospitalized on five previous occasions, apparently for psychiatric reasons.

The record contains the report of the attending physician's initial examination and initial interviews of the beneficiary which details the patient's recent history and events which precipitated the confinement of July 18, 1976. This document reports that the patient was hospitalized for thirty nine days for psychotic depression. Two days after being discharged for the purpose of joining a commune in Bellingham, Washington the patient was readmitted to the same hospital. The physician's report indicates that upon arrival at the commune, the beneficiary discovered the facilities and ambiance were not to her taste or liking and she therefore presented herself at the hospital admitting room claiming she was jittery, nauseated and so scared that she felt readmission was necessary. The physician further reported that the patient stated she was unable to find a place to stay outside the hospital and wanted very badly to be readmitted to the hospital. The physician noted that he felt this was somewhat of an emergency and admitted her.

CHAMPUS claims for the fifty-two day hospitalization (July 18, 1976 to September 8, 1976) were filed with the CHAMPUS Fiscal Intermediary, Blue Cross of Washington and Alaska. Initially, the first twenty-one days of hospitalization were cost-shared and the remainder denied as not medically necessary. Following receipt of a letter from the attending physician attesting to the medical necessity of the hospitalization, another nineteen days of care were cost-shared. The last twelve days of hospitalization were denied coverage based on the attending physician's progress note on August 26, 1976, to "...continue hospital care until she finds a living place."

Denied coverage of the last twelve days of hospitalization was affirmed on appeal by Informal Review and Reconsideration Review of the fiscal intermediary. When the denial was upheld by OCHAMPUS at Formal Review, a request for hearing was made. The

hearing was held by , Hearing Officer, on February 20, 1980. 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 OF FACT

The primary issue in this appeal is whether the inpatient care received at Overlake Memorial Hospital from July 18, 1976 to September 8, 1976 is authorized care under CHAMPUS. In resolving the issue it must be determined (1) whether any or all of the care was medically or psychologically necessary in the diagnosis and treatment of a mental or physical illness, injury or bodily malfunction, and (2) whether the care is excluded from CHAMPUS coverage as custodial/domiciliary care or furnished at an inappropriate level.

Medically Necessary

The Department of Defense Appropriations Act, 1976, Public Law 94-212, prohibits the use of CHAMPUS funds for "... any other service or supply which is not medically or psychologically necessary to diagnose or treat a mental or physical illness, injury or bodily malfunction as diagnosed by a physician, dentist or a clinical psychologist." A similar restriction has appeared in all Acts for subsequent fiscal years.

The joint-service regulation implementing the CHAMPUS statutes at the time the care in question was furnished was Army Regulation 40-121. In paragraph 1-3.c., AR 40-121, necessary services and supplies are defined as:

> "Those services, consumable supplies, and supportive devices ordered by the provider of care as essential for the care of the patient or treatment of the patient's medical or surgical condition..." (emphasis added)

Therefore, under these statutory and regulation provisions, the inpatient care in question must be found to be medically or psychologically necessary (essential) for the care or treatment of a diagnosed condition.

The appealing party's representative contends that the beneficiary's degree of mental impairment was evidenced by the fact she sought continued hospitalization realizing she could not function properly outside the inpatient setting. The representative offered this opinion based on his advanced degree in social psychology and his position as Associate Professor of Psychology at the U.S. Coast Guard Academy. In his

opinion, as long as she claims she was sick, she was sick, and she was likely to do something to prove she was disturbed. In addition, it was the representative's position that the need for hospitalization was a matter best judged by the attending physician and should be reviewed based on his wife's inability to maintain herself on the outside without the benefit of hospitalization.

Medical review opinions regarding the case in question were obtained by the fiscal intermediary and by OCHAMPUS. The Washington State Professional Standards Review Organization reviewed the case on two occasions. At first the documentation was limited and the reviewers were unable to ascertain the appropiateness of care. After additional documentation was received, it was opined that the medical necessity of continued hospitalization after the first five days of care was not established.

OCHAMPUS obtained the professional opinions of three consultants under the auspices of the American Psychiatric Association CHAMPUS Peer Review Project. Although the three psychiatrists were asked specifically to comment on the last twelve days of hospitalization, two of the psychiatrists addressed the entire period of hospitalization from July 18, 1976 to September 8, 1976. opined that the record failed to document the need for hospitalization at the acute level for more than ten days and that the major portion of the hospitalization was devoted to domiciliary care.

opined that the reason for admission (as stated by the attending physician) was not adequate to justify admission as outlined in the American Psyciatric Association model criteria. In addition, he opined that the attending physician's progress notes did not indicate active therapy or a clear treatment plan, and the nursing notes did not indicate a severe degree of disturbance. Finally, he opined that the acute hospital setting was not mandatory, particularly the last twelve days of hospitalization on which he was specifically requested to comment. And, opined that the patient could have been treated on an outpatient basis during the period August 28, 1976 to September 8, 1976.

A thorough review of the Hearing File of Record leads me to conclude that none of the hospitalization was medically or psychologically necessary in the treatment of this patient. Based on the attending physician's description of the circumstances requiring the patient's hospitalization on July 18, 1976, the fiscal intermediary authorized CHAMPUS payment of forty days of care. However, the documentation of record does not support the attending physician's description nor the medical or psychological necessity of the care.

According to information contained in the Hearing File of Record, the patient had a history of mental illness requiring

previous inpatient hospital confinments dating back to 1975. Statements from the husband indicated the beneficiary was not able to work, attend school or maintain the home due to her mental disorder. He further indicated that effective January 1, 1976, he and the beneficiary entered into a separation agreement preliminary to the granting of a final divorce in December 1977.

The admitting physician in his initial report of admission on July 18, 1976, indicated that the patient was in obvious distress and appeared to be bordering on a psychotic state, displayed agitation and presented a worried expression. However, this same document contains information indicating the beneficiary's vital signs were well within normal limits, that her mental capacity was intact, there was no evidence of disorientation, delusional activity or hallucinatory thinking, and the results of physical evaluation were essentially negative.

The available documentation indicates that the treatment plan prescribed for the beneficiary consisted of individual and group psychotherapy, chemotherapy, as well as physical and occupational therapy. Although the attending physician indicated he saw the patient on an individual basis up to three times a week, documentation of this many visits was not recorded in the hospital records. Further, the physician's notes provide little detail of the patient's progress or response to treatment and the final physician's note recorded August 27, 1976 (12 days before discharge) indicated only "...will continue hospital care until she finds a living place."

There is no evidence of individual psychotherapy sessions with the attending physician during the last twelve days of hospitalization, August 28, 1976 to September 8, 1976. Group therapy sessions were conducted on a daily basis by the hospital staff, however the patient's participation was sporadic. Occasionally she was late to a session or left before it was over. In addition, she was frequently out of the hospital on pass and did not participate in the therapy. Clinical records indicate the reasons for the passes included participation in field trips, looking for living quarters, and personal activities.

The clinical records further indicate that on three occasions during the hospitalization (August 1, 1976; August 18, 1976; and September 1, 1976) the patient was scheduled for discharge. Each of these discharge dates was approved by the attending physician but subsequently canceled when the beneficiary resisted leaving the hospital.

Chemotherapy also was recorded as part of the theraputic plan but information concerning the specific drugs and dosages is not included in the record. The records do indicate, however, that

the patient was permitted to manage her own medication intake while away from the hospital on her frequent passes.

Although the attending physician's initial examination report indicates the patient presented significant symptomology of mental disorders at the time of admission, subsequent documentation confirmed the patient's condition stabilized almost immediately after confinement. Clinical records reveal that out-of-hospital passes were permitted two days after admission and were continued on a frequent basis thereafter; i.e., 37 passes during the 52 day hospitalization. Records also indicate the patient maintained her automobile on the hospital premises for personal use and that the beneficiary was able to leave the hospital for personal or social reasons, at times until after midnight, during her hospital stay.

Except for one incident in which the beneficiary confronted the hospital staff with an overt statement concerning her inability to "go on", the records contain no evidence of suicidal ideation or self destruction activity. According to clinical records, the remark to the staff coincided with a disappointing encounter with her husband. The records do not indicate that this incident precipitated any change in the patient's routine except some additional observation was recommended for that night only.

The available records indicate that the beneficiary's hospital confinement was benign and uneventful. Her condition appears to have remained stable, there is no evidence of deterioration, and little indication that any part of the hospital stay was medically or psychologically necessary, essential, or appropriate. In general, services prescribed by the treatment plan (individual and group therapy, chemotherapy, and physical and occupational therapy) could have been performed on an outpatient basis without adversely affecting the results of the therapeutic regimen.

As a result of my review of the record, I find that the record fails to document the medical or psychological necessity of the inpatient care in Overlake Memorial Hospital from July 18, 1976 to September 8, 1976. While the patient may have required some treatment, inpatient care in an acute care hospital was not essential for the care of the patient or treatment of the patient's medical condition. The inpatient care does not meet the requirements of the Department of Defense Appropriations Act, 1976 (Public Law 94-212) or the CHAMPUS regulation, Army Regulation 40-121, and is not authorized CHAMPUS care.

Custodial/Domiciliary Care

Health care specifically excluded from CHAMPUS coverage under Title 10, United States Code, Sections 1077(b)(1) is domiciliary or custodial care. As implemented by the CHAMPUS Regulation in effect at the time of inpatient care in this case (Army

Regulation 40-121, paragraph 1-2.g.) domiciliary/custodial care is defined as follows:

> "Domiciliary/Custodial care. The type of care designed essentially to assist the individual in meeting his activities of daily living, i.e., services which constitute personal care such as help in walking and getting in or out of bed, assistance in bathing, dressing, feeding, preparation of special diets, and supervision over medication which can usually be self-administered and which does not entail or require continuing attention of trained medical or paramedical personnel. (Chronically ill patients whose conditions are stabilized but who need medical services to maintain the achieved stability that can be provided safely only by or under the direct supervision of physicians, nurses, or other paramedical personnel, e.g., irrigations, catherizations, application of dressings or bandages, administration of medications and other prescribed treatments requiring skill in administration would not be considered as receiving custodial care. Thus, the essential characteristic that is to be considered in determining whether a person is receiving domiciliary or custodial care is the level of care and medical supervision that the patient requires; rather than such factors as the diagnosis, the type of condition,or the degree of functional limitation.)

The regulatory provision emphasizes it is the care rendered the patient that is controlling and not the condition itself.

Applying the above quoted requirements to the record in this appeal, it is clear the patient was hospitalized from July 18, 1976 through September 8, 1976 for her personal convenience and not on the basis of a diagnosis of depressive neurosis. Throughout this period the patient was relatively free to leave the hospital on pass, made plans several time to leave the hospital, admitted her pleasure at being in the hospital and expressed a desire to remain because of the secure atmosphere of the hospital. Further, the peer review by the American Psychiatric Association, indicated the hospitalization was not the appropriate level of care and was custodial/domiciliary in nature.

Based on the testimony, documentation and opinions, I find that the hospitalization from July 18, 1976 to September 8, 1976 was above the appropriate level of care and domiciliary/custodial in nature, thus excluded under CHAMPUS.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the inpatient care at Overlake Memorial Hospital for the dates July 18, 1976 to September 8, 1976 be denied as the care is found to be not medically or psychologically necessary, above the appropriate level of care and custodial/domiciliary in nature. Therefore, the claim for hospitalization for this period is denied. Because I have found the hospitalization from July 18 through August 27, 1976 was not a covered benefit, recoupment action is necessary to retrieve the funds erroneously paid for this period of hospitalization. Therefore, I direct the Office of General Counsel, OCHAMPUS to seek recoupment of these funds in accordance with 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 Beary

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