



ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

7 JAN 1983

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT SECRETARY

OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of)	
Sponsor:)	OASD(HA) Case File 80-09-1
)	FINAL DECISION
SSN:)	
.)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs), in the CHAMPUS Appeal OASD (HA) Case File 80-09-1 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party in this case is the participating provider, M.A., Marriage and Family Counselor. The Hearing File of Record, the tape of oral testimony presented at the hearing, the Hearing Officer's Recommended Decision, and the Memorandum of Concurrence from the Director, OCHAMPUS have been reviewed. The amount in dispute in this appeal is approximately \$1,110.00 billed charges.

It is the Hearing Officer's Recommended Decision that the claims of the beneficiary for psychological counseling services provided December 3 through December 31, 1976, January 6 through January 27, 1978 and March 6 through March 27, 1978 be denied. The basis for this recommendation is there is insufficient documentation the services were rendered as part of good medical practice and were medically necessary. The Director, OCHAMPUS concurs in this Recommended Decision.

The Acting Assistant Secretary of Defense (Health Affairs) after due consideration of the appeal record, concurs in the Hearing Officer's Recommended Decision to deny CHAMPUS payment and hereby adopts the recommendation of the Hearing Officer as the FINAL DECISION. The Recommended Decision of the Hearing Officer, however, incorrectly states the amount in dispute in this appeal. The correct amount in dispute for all claims for the period in issue is stated above.

The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) therefore is to deny CHAMPUS claims for the services of the marriage and family counselor from December 3 through December 31, 1976, January 6 through January 27, 1978

and March 6 through March 27, 1978 as not medically necessary services in the treatment of a documented nervous, mental or emotional disorder or for an illness or injury under the applicable regulations, Army Regulation 40-121 and Department of Defense Regulation 6010.8-R, which implemented the CHAMPUS. This FINAL DECISION is based on the appeal record as stated above.

FACTUAL BACKGROUND

The appeal is one of six appeals by the participating provider which were consolidated for purposes of hearing. The beneficiary in this appeal is a spouse of a United States Army member.

The record in this appeal indicates the beneficiary, together with other family members, was seen at the Fort Ord Mental Health Clinic on December 14, 1976 by _____, a child psychiatrist. Dr. _____ recommended individual therapy with the children and family therapy, once per week, with all six members. A physician referral verification signed February 20, 1980 also recommended conjoint therapy with the husband and the beneficiary in this appeal. No diagnosis for the beneficiary was stated. Apparently no psychiatric_ evaluation or testing was performed for this beneficiary.

The appeal file reflects Mr. _____ filed four CHAMPUS claims for seventeen sessions of conjoint marriage counseling during December 1976 and January and March 1978. The diagnosis on the claim forms was "family dysfunction - third marriage." The sessions consisted on two hours twice weekly during December 1976 and one and one-half hours once per week during January and March 1978. The total billed charges were \$1,110.

The December 1976 claim from Mr. _____ states a Dr. _____ was the referring physician. No physician referrals or other documentation was submitted by Dr. _____. Statements from Mr. _____ reflects Dr. _____ was treating the beneficiary for ulcers and gallstones. No therapy notes, testing results were submitted by Mr. _____ in support of his claims on appeal although requested by OCHAMPUS several times. A description of the treatment appears in a report by Mr. _____ to Dr. _____ dated January 5, 1978. Therein, Mr. _____ stated he was providing individual counseling dealing with stress, developing knowledge of dieting and home-making skills, building consistency in disciplining children and an ability to deal with emotional and practical aspects of on-going financial crises. _This report also reflects the spouse of the beneficiary was receiving conjoint marriage counseling with the beneficiary. No description of this therapy was provided.

The CHAMPUS Fiscal 'Intermediary for California, Blue Shield of California, allowed one session per week, for the December 1976 claim, issuing payment for a total of \$296.00 after deduction of the beneficiary cost-share. The explanation of benefits form indicates the second session per week was not approved for payment by the Medical Reviewer. Claims for January and March 1978 were denied, the explanation of benefits forms indicates the services were not approved per medical policy and were not a benefit of CHAMPUS. Informal Review by Blue Shield of California of other appeals by Mr. [redacted] apparently omitted review of claims for this beneficiary. In the similar appeals, the initial determination was upheld on the basis of medical opinion that Mr. [redacted] services did not reflect the usual and customary types and frequency of services. This medical review concerned Mr. [redacted] pattern of practice and applied to all claims of a similar nature. An appeal to OCHAMPUS was denied based on the absence of documentation in support of the claims. A hearing was requested by Mr. [redacted] and was held on June 5, 1980 at Fort Ord, California before [redacted] Hearing Officer. The Hearing Officer has issued his Recommended Decision. All levels of administrative appeal have been completed and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The issue in this appeal regarding the services provided by Mr. [redacted] from December 3 through December 31, 1976 is whether the services constitute necessary services in the treatment of a nervous, mental and emotional disorder under the regulation in effect at the time of care - Army Regulation 40-121. The current Department of Defense Regulation governing CHAMPUS, DoD Regulation 6010.8-R, was implemented beginning June 1, 1977. Army Regulation 40-121 governs CHAMPUS cost-sharing of medical care prior to June 1, 1977 and is applicable to the December 1976 care. DoD 6010.8-R is applicable to the January and March 1978 services. The issue regarding those periods of care is whether the services constitute medically necessary services in the treatment of a illness or injury.

The CHAMPUS law authorizes in Sections 1077(a)(5), Title 10, United States Code, the treatment of nervous, mental or chronic conditions. As implemented by Army Regulation 40-121, authorized medical benefits for dependents of military members include treatment of nervous, mental and emotional disorders (AR 40-121, Paragraph 5-2b(2)) by necessary services and supplies ordered by a physician (AR 40-121, Paragraph 5-2w). Necessary services and supplies are defined in Army Regulation 40-121 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." AR 40-121, Paragraph 1-6c.

Services of professional personnel, other than a physician, are authorized for treatment of nervous, mental and emotional disorders when ordered by a physician as essential for the proper care and treatment of the patient. (AR 40-121, Paragraph 5-2m.) Although the provider in this appeal, a marriage and family counselor, would qualify as an authorized provider under this provision, services cost-shared by CHAMPUS must be supported by medical records documenting the services as necessary or essential for the proper care and treatment of patient's condition.

Under DoD 6010.8-R, medically necessary services required in the diagnosis and treatment of illness or injury are covered benefits. (DoD 6010.8-R, Chapter IVA.1.) 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...." (DoD 6010.8-R, Chapter II. B.25.)

Services of a marriage and family counselor are covered on a fee for service basis if referred by a physician, the physician provides ongoing oversight and supervision and the provider certifies on each claim that a written report of the results of the treatment will be or has been made. (DoD 6010.8-R, Chapter VI C3.d.)

As stated above, the provider claimed services of conjoint marriage counseling but stated in a report to Dr. he was providing individual therapy. Conjoint marriage counseling was said to have been provided to the spouse and beneficiary in the same report. As no therapy notes were submitted, the file is unclear as to what therapy was actually provided - individual or conjoint. The referral by Dr. is also unclear. In two documents dated February 1980, Dr recommended family therapy in one and conjoint marriage counseling in another. Therefore, the type of therapy recommended is unclear from the record. The only description of therapy was provided in a 1978 report to Mr. from Mr. . The therapy provided, discussed above, appears more educational than medical i.e. dieting and home-making skills and dealing with financial problems. No diagnosis pertaining to the beneficiary was made - family dysfunction was the only diagnosis made. Only very basic physician referral is documented in the record; no testing results or in depth psychiatric evaluations were

apparently performed by Dr. . No explanation was offered by Mr. as to why Dr. was listed on the December 1976 claim as the referring physician. Some documentation of oversight by Dr. was provided; however, these documents actually confuse the type of care recommended and provided.

As noted above, peer review by psychologists associated with Blue Shield of California recommended denial of one session per week based on the usual and customary practice to use conjoint therapy when working with more than one member of a family. Mr. has contested the disallowance of one session per week as arbitrary and without procedural justification. Peer review by a marriage and family counselor with a doctoral degree, acting as a consultant to OCHAMPUS, opined that to perform an evaluation additional information was required; e.g., parental history, marital history, description of the family interaction system, developmental history of the beneficiary, treatment plan for the family and individual members, and progress notes. The clinical documentation provided by Mr. was opined by the consultant to be grossly inadequate, i.e., neither complete nor comprehensive.

OCHAMPUS attempted to assist Mr. in obtaining additional information to support his claims. In September, 1979, OCHAMPUS contacted the Fort Ord, California Human Services Coordinating office, which Mr. stated referred patients to him, to obtain medical records for the beneficiary. No medical records were available from this source.. Dr was also contacted by OCHAMPUS to obtain information regarding his referral to Mr. . However, as noted by the peer review, the basic information from which to evaluate the presence of a nervous, mental or emotional disorder and the necessity for the counseling is not present in this appeal.

Testimony by Mr. at the hearing added no useful information on which I can consider authorizing CHAMPUS cost-sharing. Essentially, CHAMPUS is requested by Mr. to cost-share \$1,110 in services for which he has no individual diagnosis and a referral for either family or conjoint counseling in which he apparently provided individual counseling for essentially non-medical problems.

The above stated regulatory authorities authorize CHAMPUS cost-sharing for services essential or medically necessary for the care of the patient or treatment of the patient's medical condition. As neither a medical condition requiring treatment nor the necessity of the services are documented in this appeal, I must decline CHAMPUS cost-sharing for the entire period of care.

The Hearing Officer found the record contained insufficient documentation that the services were part of good medical

practice. I agree with the Hearing Officer on this issue; I fail to find any documentation in the file supporting cost-sharing of any of the services. Therefore, I find CHAMPUS cost-sharing for the services provided by _____ to the beneficiary during December 3 through December 31, 1976 and January 6 through January 27, 1978 and March 6 through March 27, 1978 must be denied on the basis stated above. As \$296 in CHAMPUS payments were previously issued to _____ for services within the period in dispute, I direct OCHAMPUS to initiate recoupment action to recover these payments which were made erroneously.

SUMMARY

In summary,- it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the services provided by the appealing marriage and family counselor from December 3 through December 31, 1976 and January 6 through January 27, 1978 and March 6 through March 27, 1978 were not necessary services under AR 40-1-21 or medically necessary under DoD 6010.8-R and are not covered by CHAMPUS.

The claims and the appeal of _____ are 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