

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

7 JAN 1983

ALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT SECRETARY

OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of OASD(HA) Case File 80-09-2

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 80-09-2 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 \$3,640.00 billed charges.

It is the Hearing Officer's Recommended Decision that the claims of the beneficiary for conjoint psychological counseling services provided July 3 through December 29, 1976 be denied. The basis for this recommendation is there is insufficient documentation the services were rendered as part of good medical practice. 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 July 3 through December 29, 1976 as not medically necessary services in the treatment of a documented nervous, mental or emotional

disorder under the applicable joint service regulation, hereinafter referred to as Army Regulation 40-121, 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 the spouse of a United States Army member. The record in this appeal reflects that Mr.

provided conjoint marriage counseling to the beneficiary during July 3 through December 29, 1976. The diagnosis stated on the claim form was family dysfunction. During this period fifty-two sessions, two per week, were conducted for which Mr.

filed six CHAMPUS claims at \$70 per session for a total billed charge of \$3640. No therapy notes, treatment plan, testing results or other documentation pertaining to the treatment provided were submitted by Mr. in support of his claims in appeal although requested several times by OCHAMPUS and the fiscal intermediary. The services claimed of "conjoint marriage counseling" indicate a third party - the spouse - was actively involved in the treatment. The billing of \$70 per hour also indicates the presence of the spouse. However, the record in this appeal does not indicate the beneficiary's spouse was actively involved or attended the sessions. In testimony at the hearing, Mr. stated he excluded the spouse from the therapy. The appeal file reflects another family member was receiving care from Mr. during this same period.

The referring physician is listed on the claim form as a Dr. M.D. OCHAMPUS contacted Dr. concerning his referral for marriage counseling for the beneficiary. In his response, Dr. , a Doctor of Osteopathy, not a Doctor of Medicine, stated he did not recall the circumstances under which the beneficiary was referred for treatment. He requested the beneficiary obtain her records from Fort Ord, California and forward them to him. The beneficiary did not reply. Dr. was therefore unable to confirm the referral. The beneficiary had written previously to Dr. stating he had referred her to the Mental Health Clinic, Fort Ord, California in the summer of 1976. As stated above, Dr. could not confirm his involvement with the beneficiary.

The beneficiary states she sought Mr. services herself after a non-availability statement was obtained from Fort Ord. A non-availability statement was granted by Fort Ord, California on September 8, 1976 stating family counseling was required. However, in later contact with OCHAMPUS, the Fort Ord Patient Administration Division clarified the statement as only notification the hospital was not involved in treatment. At the hearing, Mr. submitted a clinical record on the

beneficiary from the gynecology clinic presumably at Fort Ord. This report states the beneficiary was seen in the clinic in July and August 1976 and that marital counseling was recommended. No diagnosis of a nervous, mental or emotional disorder is made on this report. The report does not refer the beneficiary to a specific provider. Therefore, the evidence of record does not indicate any direct physician referral of the beneficiary to Mr. .

The CHAMPUS Fiscal Intermediary for California, Blue Shield of California, allowed one session per week, at an allowable charge of \$35, issuing payment for a total of \$1,548 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. Informal Review and Reconsideration determinations by Blue Shield of California affirmed the initial determination on the basis the allowance of one session per week was within the usual and customary guidelines for this type of care. An appeal to OCHAMPUS was denied based on the absence of documentation in support of the claims. A hearing was requested by Mr. and was held on June 5, 1980 at Fort Ord, California before , 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 primary issue in this appeal is whether the services provided by Mr. from July 3 through December 29, 1976 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 period in issue in this appeal.

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 5-2 b(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.

As stated above, the beneficiary received conjoint therapy from the appealing party at two sessions per week for six months. During this extended period of treatment, the diagnosis stated by Mr. [redacted] was not confirmed by testing or other evaluation and apparently no therapy notes treatment plan, or progress reports were made. As stated above, Mr. [redacted] testified the beneficiary's spouse was not involved in the claimed "conjoint marriage counseling". Therefore, the claim apparently does not reflect the treatment actually provided - individual counseling. Further, physician referral has not been established by the record in this appeal. Dr. [redacted] apparently did not refer the beneficiary to Mr. [redacted]; the Fort Ord Mental Health Clinic denies any involvement with this treatment of this patient and the Gynecology Clinic did not make a diagnosis and apparently did not refer the beneficiary to Mr. [redacted]. None of the claimed referring physicians maintained any contact with Mr. [redacted] or the beneficiary.

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. However, as noted above, the treatment provided the beneficiary herein was not conjoint therapy as the spouse was not involved according to Mr. [redacted]. Mr. [redacted] 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. [redacted] 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.

The Gynecology Clinic at Fort Ord furnished a report indicating marital counseling was recommended; however, no diagnosis was made on this report.

In January, 1980, OCHAMPUS contacted the referring physician, Dr. _____, as information regarding the referral was not furnished by Mr. _____. Dr. _____ was unable to confirm any involvement with the beneficiary.

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 approximately \$3,640 in services for which he has no confirmed diagnosis, no referral or physician involvement and no documentation as to the actual treatment provided.

The above stated regulatory authorities authorize CHAMPUS cost-sharing for services essential 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 July 3 through December 29, 1976 must be denied on the basis stated above. As \$1,548 in CHAMPUS payments were previously issued to Mr. _____ 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

July 3 through December 29, 1976 were not necessary services under AR 40-121 and 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.

A handwritten signature in black ink that reads "John Beary" with a long, sweeping horizontal line extending to the right.

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