ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

AUG 23 1983

Appeal of:	)	
	)	OASD(HA) File 83-17
Sponsor:	)	
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 83-17 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the CHAMPUS beneficiary, a retired Gunnery Sergeant of the United States Marines, and is supported in his appeal efforts by the Rehabilitation Center of Hospital. The appeal involves claims for a cardiac rehabilitation program in which the beneficiary participated from July 31, 1980 to March 30, 1981. The amount in dispute involves charges of $978.00.

The hearing file of record, the Hearing Officer's Recommended Decision and the Analysis and Recommendation of the Director, OCHAMPUS have been reviewed. A hearing was scheduled for January 21, 1983 at , New York pursuant to a notice that was sent to the beneficiary and to the Rehabilitation Center on January 3, 1983. The beneficiary notified OCHAMPUS by telephone on January 19, 1983 that he wished to waive the hearing and to have the matter reviewed by the Hearing Officer on the record. Therefore, the Hearing Officer has issued her Recommended decision on the record.

It is the Hearing Officer's Recommended Decision that the OCHAMPUS First Level Appeal determination denying cost-sharing of the cardiac rehabilitation program be upheld. The Hearing Officer found that there was not sufficient documentation to support the medical necessity of the cardiac rehabilitation exercise treatment, that there was not sufficient documentation to support a finding that it constituted physical therapy, that the program came within the meaning of a general exercise program, that the program constituted preventive care, and that the program constituted education/training. The Director, OCHAMPUS, concurs in these findings and recommends adoption of the Hearing Officer's Recommended Decision as the FINAL DECISION.

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 cost-sharing of the beneficiary's cardiac rehabilitation program and hereby adopts the recommendation of the Hearing Officer to deny cost-sharing as the FINAL DECISION.

The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) is therefore to deny CHAMPUS cost-sharing for the appealing party's cardiac rehabilitation exercise program. This decision is based on the findings that the cardiac rehabilitation program was not generally accepted medical practice and therefore was not medically necessary, was not a physical therapy program, and was primarily preventive care. Additionally, the care, in part, consisted of an educational program.

FACTUAL BACKGROUND

The record indicates that the beneficiary was under the care of ., M.D. for coronary artery disease. In a letter dated June 12, 1981, Dr. states that, "[the beneficiary] has recently had some escalation of his symptoms and I advised the patient to enroll in a medically supervised exercise programme."

The beneficiary participated in the coronary care rehabilitation exercise program at Hospital in , New York. Claims were submitted for sessions from July 31, 1980 to March 30, 1981.

The CHAMPUS fiscal intermediary paid $494.50 of the billed charges of $978.00. The CHAMPUS First Level Appeal, dated September 15, 1981, determined that the program was not a covered benefit and that the payments were in error. Therefore, the entire billed amount of $978.00 is in dispute.

The record includes an undated copy of a form letter from Hospital that describes the program as follows:

> "This program consists of three phases: 1. Education; 2. Graded Exercise Evaluation and periodic retesting; 3. Exercise.
>
> Phase One - In an effort to increase patient understanding and compliance with the prescribed medical regime, the educational component teaches the program participant all he needs to know regarding coronary heart disease and rehabilitation. This is accomplished by attending group educational classes that pertain to the participant's condition. Example of classes given are nutritional counseling, diet planning, medications, coronary heart disease, stress

reduction, and the role of exercise in heart disease.

Phase Two - The evaluation of the participant is performed via the graded exercise test (Stress Test) initially before exercise training has begun safely for developing the exercise prescription and periodically thereafter, to evaluate progress and update the exercise participation.

Phase Three - The therapeutic exercise program is directed by our staff cardiologist, and is also supervised by our physiologist and registered nurse. During each hour-long session, intermittent cardioscope and continous ECG monitoring is done along with various cardiovascular rehabilitative exercises.

... The program is directed toward assisting the participant to recuperate and attain an optimal level of functioning. This optimal level of functioning will result in a shorter and more effective period of convalescence, earlier return to work, and, most important, avoid unnecessary cardiac complications and hospitalizations.

Today, current medical knowledge and research directly support that, for the cardiac patient, rehabilitation involving education and therapeutic exercise enhances and shortens recovery periods, directly improves cardiovascular functioning, and returns the patient to his former occupation in a shorter period of time. In addition, it may prevent or decrease the severity of possible future cardiac events and unnecessary hospitalizations."

The OCHAMPUS First Level Appeal determination denied CHAMPUS cost-sharing for the following reasons:

"a. Your cardiovascular rehabilitative exercise and telemetry program and all related services are excluded from CHAMPUS benefits as a general exercise program.

b. Cardiac rehabilitation is considered to be preventive care which is also excluded from CHAMPUS benefits."

The determination went on to state:

> "Since it is determined that cardiac rehabilitation is not a covered CHAMPUS benefit, all payments extended by the fiscal intermediary for these services were issued in error. All services and supplies related to noncovered condition are excluded from benefits. Therefore, the payments issued for the stress testing were also issued in error as the stress tests were performed only to evaluate progress and update the exercise prescription."

In a letter to OCHAMPUS dated September 23, 1981, the Program Director for the Rehabilitation Center stated:

> "This program should not be defined as a general exercise program. We only admit patients who have a definitive diagnosis of cardiovascular disease and all exercise is performed in a medically supervised and equipped setting.
>
> In addition, the program is also not designed for preventive care for [the beneficiary] or any other participant. It is designed as a treatment modality for cardiovascular disease. The program was medically ordered to physiologically and psychologically rehabilitate [the beneficiary], and to treat his cardiovascular symptoms. This is best accomplished through individually prescribed cardiac exercise treatment sessions and periodic graded exercise ECG stress evaluations. The purpose of the graded exercise ECG stress evaluation is to periodically diagnose the patient's present cardiovascular status in accordance with his medications, exercise prescription, and disease progression.
>
> Therefore, we feel that our program with its associated services should not be defined as preventive care especially with regard to [the beneficiary's] cardiovascular condition. This treatment is vital in his disease management."

A hearing was scheduled for January 21, 1983 in , New York before it was waived and a decision requested on the record. The OCHAMPUS Hearing Officer , has issued her Recommended Decision and issuance of a FINAL DECISION is proper.

PRIMARY ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are whether the cardiac rehabilitation exercise program was medically necessary, whether

it constituted physical therapy and whether the program constituted preventive care.

Medically Necessary

The CHAMPUS regulation DoD 6010.8-R, chapter IV, A.1 provides the following general limitation to the basic program:

> "Subject to any and all applicable definitions, conditions, limitations, and/or exclusions specified or enumerated in this Regulation, the CHAMPUS Basic Program will pay for medically necessary services and supplies required in the diagnosis and treatment of illness or injury...."

To interpret this Regulation, as it applies to the treatment in dispute, requires a review of what is meant by the term "medically necessary." The definition in DoD 6010.8-R, chapter II, provides in part that, "Medically necessary includes [the] concept of appropriate medical care." The definition of "appropriate medical care" requires that, "... the medical services performed in the treatment of a disease or injury ... are in keeping with the generally acceptable norm for medical practice in the United States."

There is, in addition, a specific CHAMPUS regulation in chapter IV, G.15 that excludes, "services and supplies not provided in accordance with accepted professional medical standards...."

As noted by the Hearing Officer in her Recommended Decision, there is no documentation in the hearing file to substantiate the actual medical condition of the beneficiary either at the time the cardiac rehabilitation was recommended by his physician or during the progress of the program. The record includes a letter from Dr dated June 12, 1981, ten months after the exercise program began, which states, "The above named patient is under my care because of coronary artery disease ...." There was no medical documentation describing the extent of the coronary artery disease, the reasons for the treatment prescribed or the expected results.

A conclusion that the treatment was "prescribed" is unsubstantiated by the record as the actual term used by Dr. in his letter was "advised;" i.e., "I advise the patient to enroll in a medically supervised exercise programme." For purposes of this appeal, it will be assumed that Dr prescribed the benficiary's entry into the program.

This Office has in two previous FINAL DECISIONS, OASD(HA) case file 01-81 and case file 20-79, considered the medical necessity of cardiac rehabilitation exercise programs. As was stated in OASD(HA) 01-81:

> "To constitute a CHAMPUS covered service, the cardiac rehabilitation program must therefore

> be adequate for the diagnosis and treatment of illness or disease and correspondingly, constitute treatment of a disease or illness. ... The acceptance and efficacy of the treatment of a post-myocardial infarction by the cardiac rehabilitation program must therefore be documented."

The decision went on to conclude, as had also been concluded in OASD(HA) 20-79, that:

> "... the general acceptance and efficacy of the program in the treatment of post-myocardial infarction is not supported by medical documentation nor recognized professional opinion and authoritative medical literature contemporaneous with the dates of care."

In OASD(HA) 01-81 medical reviews requested by OCHAMPUS from the . for Medical Care were discussed. In commenting on the medical reports, this Office stated:

> "These reports reveal a change in thinking by the reviewing physicians regarding the medical necessity of the [cardiac rehabilitation] program based on evidence which suggests the program might contribute to a reduction in death in the first six months following an acute myocardial infarction and the increasing acceptance of the programs by the general medical community. However, the opinions clearly state cardiac rehabilitation programs remain an unproven modality, are not a standard of care in every community, and evidence does not support a reduction in heart disease as a result of the programs.
>
> The physicians cite improved function capacity to perform activities of daily living with less fear, earlier return to work and increased understanding by the patient of the need for management of hypertension and stress as supporting the medical necessity.
>
> * * *
>
> The evidence herein and the peer review opinions given at the time the services were rendered disclose no evidence of the documented effectiveness of the exercise programs in the treatment of myocardial infarction (coronary heart disease); instead the file clearly indicates its unproven nature."

In OASD(HA) 20-79 it was stated:

> "Further, it is acknowledged that the program may very well have produced beneficial results for the individual party -- as would be anticipated for any individual, with or without a heart condition, who under took a program of structured exercise and weight reduction. We do not concur, however, that the exercise/weight reduction regimen constituted specific treatment. Further, the fact that a physician orders, prescribes or recommends that a patient pursue a certain course does not in itself make it medically necessary treatment. A physician in caring for his or her patient may, and properly so, advise and recommend in many areas beyond specific treatment. This is particularly true relative to encouraging changes in lifestyle -- i.e. increased exercise, elimination of smoking, weight reduction, etc."

In OASD(HA) 01-81, the care in issue was from July 1978 to August 1979. This appeal involves care from July 1980 to March 1981. The program entered by the beneficiary began one year after the program addressed in OASD(HA) 01-81 ended. There is no evidence that contradicts the findings in the earlier decisions or establishes that medical norms for such programs had changed at the time of the beneficiary's care in this case. In the appeal procedure, the appealing party has the responsibility of providing whatever facts and documentation are necessary to support opposition to the CHAMPUS determination. The record in this appeal does not establish the general acceptance and efficacy of cardiac rehabilitation programs in the treatment of heart disease as supported by medical documentation or recognized and authoritative literature contemporaneous with the dates of care. Therefore, I must conclude the appealing party's cardiac rehabilitation program was not medically necessary and was excluded from CHAMPUS coverage, consistent with previous determinations in OASD(HA) case files 01-81 and 20-79.

Physical Therapy

A determination that the program was not medically necessary prevents CHAMPUS coverage. Since the program was described as "medically ordered to physiologically and psychologically rehabilitate" the beneficiary, it is appropriate to address the program as physical therapy. The Regulation provides in chapter IV, C.3.j that:

> "To be covered, physical therapy must be related to a covered medical condition. If performed by other than a physician, the

> beneficiary patient must be referred by a physician and the physical therapy rendered under the supervision of a physician.
>
> (2) General exercise programs are not covered even if recommended by a physician. Passive exercises and/or range of motion exercises are not covered except when prescribed by a physician as an integral part of a comprehensive program of physical therapy.

The Regulation defines a physical therapist in chapter II, B.134 in the following terms:

> "'Physical therapist' means a person who is specially trained in the skills and techniques of physical therapy (that is, the treatment of disease by physical agents and methods such as heat, massage, manipulation, therapeutic exercise, hydrotherapy and various forms of energy such as electrotherapy and ultrasound)...."

There is no evidence in the record to indicate that the treatment received was of the type that is considered physical therapy; i.e., the treatment of disease by physical agents and methods. In addition, the section on physical therapy specifically excludes an exercise program. While the record does not contain a precise description of the program, it is noted that the program is described in general terms as having [illegible] education, graded exercise evaluation, and exercise. There is no evidence in the record to support a determination that it was physical therapy or that the general acceptance and efficacy of the treatment at the time of care was established. Therefore, consistent with my finding above that the program was not medically necessary, I further find that the appealing party's cardiac rehabilitation program does not meet the CHAMPUS criteria for coverage as physical thearpy.

Preventive Care

The two previous FINAL DECISIONS referred to in this appeal involved beneficiaries who had suffered heart attacks. In OASD(HA) 20-79, the beneficiary claimed the cardiac rehabilitation program was necessary in the treatment of his long term heart condition and he claimed, though it was not documented, to have had two heart attacks. In OASD(HA) 01-81, the beneficiary had suffered an acute myocardial infarction. In this appeal there is no evidence or documentation indicating the beneficiary had ever suffered a myocardial infarction. Nor is there evidence in the record to indicate the beneficiary has ever suffered angina or undergone coronary bypass surgery. The treating physician merely stated the beneficiary "had some escalation in his symptoms."

This squarely raises the question whether the program constituted preventive care. The CHAMPUS regulation at chapter IV, G.38 also excludes preventive care.

The Hearing Officer in her Recommended Decision found the provider's description of the program represents on its face that much of its focus is preventive care. The provider denied that the exercise program constituted preventive care. The provider contended that it was a treatment modality for cardiovascular disease and medically ordered to physiologically and psychologically rehabilitate the beneficiary and treat his symptoms.

The Hearing Officer found the statement, "... it may prevent or decrease the severity of future cardiac events and unnecessary hospitalizations" specific support for the finding that it was preventive care.

There was no evidence that the cardiac exercise program was an alternative to standard treatment. The statement by the provider that the program would "psychologically rehabilitate" the beneficiary does not describe specific treatment. The statement may have referred to the educational aspects of the program designed to allow the beneficiary to cope with stress and modify his life style.

Since there is no medical evidence to establish the efficacy of such programs, there is no evidence to support the efficacy of cardiac rehabilitation programs as preventive treatment. However, the Hearing Officer's conclusion that one of the [illegible] program was preventive in nature is supported by the record and the program is therefore also excluded from coverage by the preventive care exclusion in the Regulation.

SECONDARY ISSUES

Educational/Training

The Regulation at chapter IV, G.43 excludes:

> "Educational services and supplies, training nonmedical, self-care/self-help training and any related diagnostic testing or supplies. (This exclusion includes such items as special tutoring, remedial reading, and natural childbirth classes.)"

The description of the program by the provider lists education as the first of three phases. A letter from the provider states, "In an effort to increase patient understanding and compliance ... the educational component teaches the program participant all he needs to know regarding coronary heart disease. This is accomplished by attending group educational classes...." Based on this program description by the provider, it appears undisputed that parts of the program were educational in nature.

Had it not been concluded that the cardiac rehabilitation program was not a covered benefit under CHAMPUS, those aspects of the program specifically related to educational activites would have to be identified as they are specifically excluded from coverage.

Related Charges

"All services and supplies (including inpatient institutional costs) related to a noncovered condition or treatment" are excluded from CHAMPUS cost-sharing by Chapter IV, G.66. Therefore, the monitoring and stress testing that was performed as a part of the cardiac rehabilitation program is not entitled to cost-sharing.

Erroneous Payment

The CHAMPUS fiscal intermediary paid $494.50 of the billed charges of $978.00. Based upon the above determination that the care was not authorized under CHAMPUS, the fiscal intermediary's payment was erroneous. This matter is referred to the Director, OCHAMPUS for appropriate recoupment action under the Federal Claims Collection Act.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the cardiac rehabilitation program undergone by the beneficiary during the period July 31, 1980 to March 30, 1981 be denied CHAMPUS cost-sharing as it was not medically necessary, was therapy and constituted preventive care. In addition, segments of the program were educational in nature and are specifically excluded from CHAMPUS coverage. Therefore, the claims on the dates in issue and the appeal of the beneficiary are denied. The case is returned to the Director, OCHAMPUS for appropriate action under the Federal Claims Collection Act to finalize the recoupment of erroneous payment of some of the claims. Issuance of this FINAL DECISION completes the administrative appeal 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