



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

SEP 29 1983

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of)	
)	OASD(HA) File 83-19
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 83-19 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing parties in this case are the beneficiary and the provider, Hospital and Research Center. The beneficiary is the 5½-year-old son of an enlisted member of the United States Navy and was represented by his father and an attorney.

The appeal involves the question of CHAMPUS coverage of inpatient care provided the beneficiary from February 17, 1981, through April 23, 1981. The total charge for inpatient services received by the beneficiary for these dates was \$16,490.00 and is the amount in dispute.

The Hearing File of Record, the tapes and oral testimony 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 CHAMPUS coverage for inpatient care from March 17, 1981, through April 23, 1981, be denied because it was above the appropriate level of care and not medically necessary. The Hearing Officer recommended CHAMPUS coverage of the hospitalization from February 17, 1981, through March 16, 1981. The Director, OCHAMPUS, concurs in the 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 cost-sharing of the beneficiary's hospitalization from March 17, 1981, to April 23, 1981, 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 approve CHAMPUS coverage for inpatient care at the Hospital and Research Center from February 17,

1981, through March 16, 1981. The decision to deny coverage from March 17, 1981, to April 23, 1981, is based on findings that such care was above the appropriate level of care and not medically necessary.

FACTUAL BACKGROUND

The beneficiary, a 5½-year-old male at the time of his hospitalization in the _____ Hospital and Research Center, was referred to this facility by the family physician for evaluation and treatment of perennial asthma, rhinitis, eczema, and possible juvenile rheumatoid arthritis. The beneficiary's medical history reveals that he developed respiratory problems in the first few months of his life, was diagnosed as having bronchitis, and was treated with oral antibiotics. During the first year of his life he had several short hospital admissions for bronchitis. By age one his diagnosis was changed to asthma, and his treatment included use of an oxygen tent. His mother believed that the child's asthma became worse by age three; however, since age three his condition has stabilized. His mother described his asthmatic symptoms as being mild to moderately severe. A typical attack was usually preceded by the child acting tired, frequently nauseated, and afterwards he would begin wheezing. This mild wheezing could continue for several days. During the year preceding the beneficiary's hospitalization involved in this appeal, his mother gave him multiple injections of adrenaline as prescribed by the family physician.

The beneficiary has not experienced a loss of consciousness or seizures but has had mild cyanosis. His asthmatic condition causes continuous wheezing almost daily. This condition was worse in the fall and winter than in the spring and summer. His mother indicated that from the time he was a baby he has had a posterior nasal drainage which caused him to cough and vomit thick sputum. The child was on a restricted diet and does not digest peanuts, potatoes, fish or pork. However, he does eat small amounts of milk or milk products without any problems; but large amounts will cause nausea, vomiting, and sometimes a rash. None of these suspected food allergens has caused wheezing or acute respiratory distress.

Upon admission to the hospital on February 17, 1981, the beneficiary was taking Theophyl, Entex, Atarax, and Robitussin. The admitting physicians, a staff physician in the Department of Pediatrics and a fellow in Clinical Immunology in the Department of Pediatrics, conducted a physical examination. These physicians noted that the beneficiary was well-nourished, well-developed, in no acute distress, and very cooperative. His vital signs were normal. Based on this physical examination, it was the impression of the attending physicians that the beneficiary was suffering from asthma; perennial rhinitis; mild eczema; a history of food sensitivity to milk, peanuts, potatoes,

fish, and pork; a history of drug sensitivity to penicillin, Amoxicillin, Keflex, Erythromycin, Prednisone, and Alupent; a history of urticaria; and a history of recurrent pneumonia.

The treatment plan formulated by the attending physicians consisted of nine areas of review. These included chest x-rays, sweat chloride tests, pulmonary function testing, spirometry, exercise testing, evaluation of aerosolized bronchodilators, immediate hypersensitivity skin testing, serum IgE, nasal smear for eosinophils, and total eosinophil count. Sinus x-rays were requested to determine if the sinusitis was causing the patient's recurring rhinitis. Obtaining x-rays of knees and hips, and an eye examination were necessary to rule out juvenile rheumatoid arthritis. To rule out food allergies, the treating physicians recommended immediate hypersensitivity skin testing to the suspected food allergies and controlled double blind challenges. Because of the beneficiary's history of drug-allergies, the treating physicians recommended using both Alupent and Prednisone and observation of the beneficiary in the hospital for objective symptoms. They also recommended obtaining a sleep study with an esophageal pH probe to detect significant gastroesophageal reflux and obtaining fasting blood sugar and routine urinalysis to determine if the child suffered from diabetes mellitus. Finally, the treatment plan called for the evaluation of past chest x-rays, obtaining immunoglobulins, and delayed hypersensitivity skin testing for treatment of the patient's recent pneumonias.

The nursing discharge notes indicate the beneficiary had several wheezing episodes during his hospitalization. The patient was encouraged to accept, and eventually accepted, the use of warm water to control his wheezing. The use of warm water usually cleared the problem; however, occasionally he needed medication. The physicians were able to rule out juvenile rheumatoid arthritis. The treatment for food sensitivity resulted in challenges to milk, pork, potatoes, raw tomatoes, peanuts, cheese, fish, and strawberries being negative. Upon discharge the beneficiary was enjoying a regular diet with no problems. The tests for drug sensitivity showed no reactions to either Alupent or Prednisone. In fact, when discharged, he was prescribed Alupent to control the wheezing. No unusual urticaria was noted as a result of the testing; therefore, it was not deemed to be a problem. The nursing notes do indicate that the beneficiary's mother appeared to be invested in the patient's illness and that the mother was unwilling to acknowledge that the beneficiary was not as ill as the mother thought. In fact, the notes indicate there was a lack of illness during the admission.

Three claims were filed covering the entire period of hospitalization of the beneficiary. The first claim, in the amount of \$4,680.00, covered the hospitalization from February 17, 1981, to March 1, 1981. The CHAMPUS Fiscal Intermediary paid \$4,614.00 as the CHAMPUS cost-share after deducting the beneficiary's \$5.50 per day inpatient cost-share. A second claim, in the amount of \$9,390.00, was filed with the fiscal intermediary for the hospitalization from March 1, 1981, to April 1, 1981. On November 20, 1981, the CHAMPUS Fiscal

Intermediary sent a letter to the hospital indicating that the claim for hospitalization from March 1 to April 1, 1981, had been reviewed by the fiscal intermediary's utilization and professional review committee. This committee opined, based on the patient's diagnosis, the hospital's admission and discharge summaries, and the doctor's progress notes, that the hospital stay exceeded reasonable length of stay guidelines. Therefore, the patient's inpatient care from February 17, 1981, to March 1, 1981 was the maximum length of hospitalization allowable, and the second claim for care from March 1, to April 1, 1981, was denied. However, a third claim was filed in the amount of \$2,420.00 for hospitalization from April 1 to April 23, 1981, and \$2,299.00 was paid in error by the fiscal intermediary as the CHAMPUS cost-share.

On December 16, 1981, the Chairman of the Hospital and Research Center Utilization Review Committee forwarded a memorandum to the fiscal intermediary from the attending physicians. This memorandum stated that during the beneficiary's 2-month stay a multitude of problems were evaluated and resolved. Specifically, these physicians mentioned that during the month of March 1981 three or four weeks of hospitalization were necessary to manage the beneficiary's primary problem of asthma. During this time, both spirometry and complete pulmonary functions with body plethysmography were assessed as well as the patient's response to inhaled medications. Exercise testing was conducted to determine the presence of exercise-induced asthma. Also during March 1981, several medication changes in the beneficiary's theophylline preparations were made. The attending physicians believed it necessary to stabilize the beneficiary's asthma before initiating the food challenges which they scheduled for the following month. In summary, these physicians indicated that the month of March was used to observe the beneficiary, to aid in the management of his asthma, and to observe the several medication changes which were necessary in order to stabilize his asthma.

On January 14, 1982, the fiscal intermediary informed the provider that the informal review of this beneficiary's case had been completed by the fiscal intermediary's professional staff. That review upheld the previous decision to deny CHAMPUS cost-sharing of the hospitalization from March 1, 1981, to April 1, 1981, in the billed amount of \$9,390.00. This decision was based on the CHAMPUS regulation, DoD 6010.8-R, chapter IV, quality assurance provision and long-term hospital care provision. This review decision stated the claim for hospitalization for April 1, 1981, to April 23, 1981, had been paid in error and that a refund in the amount of \$2,299.00 was required.

The provider again appealed the decision to deny the hospital claims. On January 24, 1982, the provider was informed that the reconsideration review had been completed. The reconsideration review disallowed the claims for hospitalization for March 1, 1981, to April 1, 1981, and April 1, 1981, to April 23, 1981.

On January 28, 1982, the provider appealed the determinations made by the fiscal intermediary to OCHAMPUS. Based on that appeal, the beneficiary's case file was forwarded to the Colorado Foundation for Medical Care for medical review. One of the medical reviewers has medical specialties in occupational medicine and internal medicine and is involved in direct patient care. The other medical reviewer has medical specialties in pediatrics and pulmonary diseases, is a Diplomate of the American Board of Pediatrics, and is involved in direct patient care. These medical reviewers opined that the hospitalization of this child was medically necessary at the beginning. However, the total length of stay of nine weeks was not medically necessary. It was their opinion that it would be unjustifiable to keep this patient in the hospital for nine weeks to conduct the evaluation and testing indicated in the admission summary. They felt that four weeks would be required to conduct these tests under a controlled situation. They noted that the need to keep this patient longer than the four weeks was not documented. Because this particular hospital specialized in the evaluation and treatment of asthmatic patients, they felt the level of care was appropriate for this beneficiary. They also indicated that the tests and evaluations were required to be performed on an inpatient basis because inpatient controls were necessary to conduct the type of evaluation and testing used in this case. Outpatient testing would have been inappropriate. Once again they opined that a 4-week hospital stay would be reasonable and justifiable to carry out the evaluation and testing of this beneficiary.

In connection with the medical review conducted by the Colorado Foundation for Medical Care, the OCHAMPUS Medical Director also reviewed the case prior to and after referral to the Colorado Foundation for Medical Care. It was the opinion of this reviewing physician, a child psychiatrist, that authorizing a 4-week hospitalization for this patient was generous. In his opinion, many of the services provided by this hospital could have been performed on an outpatient basis combined with a brief inpatient stay. It was his observation that the family's residence in Idaho made the patient's continuous inpatient stay a necessity only because of personal convenience and some clinical controls. In his opinion, the 4-week hospitalization is medically necessary only in the most liberal view.

The OCHAMPUS first level appeal decision was that the inpatient care from February 17, 1981, through March 16, 1981, met the regulation requirements for medical necessity and care provided at the appropriate level, and could be CHAMPUS cost-shared. This decision also held that the inpatient care from March 17, 1981, through April 23, 1981, was not medically necessary to treat this beneficiary's condition and was above the appropriate level of care. Based on this determination, the claim for hospitalization from March 1, 1981, to March 17, 1981, was cost-shared by CHAMPUS, and the fiscal intermediary issued a payment of \$5,352.00 on December 6, 1982.

On January 10, 1983, the provider, _____ Hospital and Research Center, requested a formal hearing. Prior to the hearing, the Director of Clinical Services, Department of Pediatrics, _____ Hospital and Research Center, forwarded to OCHAMPUS his medical review. This physician noted the past history of the patient and indicated that this child was referred to the _____ Hospital and Research Center because of persistent wheezing which was gradually increasing over the year preceding admission. In addition, he indicated that there was a very complex history of migratory joint pains and several complaints about side effects from drugs given to him by the family physician. Also there was a history of food sensitivity, and the child was on a severely restricted diet. The physician addressed the hospitalization in question and indicated that this period of hospitalization was used for specific food and drug challenges in the special care unit. He and the staff felt that this was necessary to document the reactions of the child to the drugs and foods which the child's mother believed to be causing the beneficiary's problems. In addition, he indicated the staff felt a strong need to keep this child an additional five weeks in order to refocus the mother's attention away from the child's illness so that she would have less investment in his being sick in the future. He summarized by saying that he believed if the child had been sent home at the conclusion of four weeks the total hospitalization would have been nonproductive; the mother would have persisted in her illness-focused attention on the child and never would have been convinced that the food and drugs which were challenged did not cause the youth's medical problems.

A hearing was held by Mr. _____, Hearing Officer, on March 2, 1983. Present at the hearing were the Director of Patient Business, and the Director of Clinical Services, Department of Pediatrics, _____ Hospital and Research Center. The provider also presented the position of the beneficiary and sponsor. In addition, the beneficiary's attorney submitted an affidavit after the hearing. 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 FINDING OF FACT

The primary issue in this appeal is whether the inpatient care received at _____ Hospital and Research Center, National Asthma Center, from February 17, 1981, through April 23, 1981, is authorized care under CHAMPUS. In resolving this issue, it must be determined whether the care rendered during the period in issue was medically necessary and at the appropriate level of care.

Medical Necessity/Appropriate Level of Care

The Department of Defense Appropriation Act, 1981, Public Law 96-527, prohibits the use of CHAMPUS funds for ". . . any services or supply which is not medically or psychologically

necessary to prevent, diagnose or treat a mental or physical illness, injury or bodily malfunction as assessed or diagnosed by a physician, dentist, [or] clinical psychologist" This restriction has consistently appeared in each subsequent Department of Defense Appropriation Act.

The CHAMPUS regulation, DoD 6010.8-R, in chapter II, B.104., defines medically necessary 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 concept of appropriate medical care."

The CHAMPUS regulation, DoD 6010.8-R, chapter II, B.104., defines "medically necessary" 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 concept of appropriate medical care."

The CHAMPUS regulation, DoD 6010.8-R, chapter IV, G., specifically excludes from CHAMPUS coverage the following care:

"3. Institutional Level of Care. Services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care."

After reviewing the information and documentation on record, the Hearing Officer found that the inpatient care furnished during the last five weeks of hospitalization was not appropriate medical care because it was not necessary to be administered in an institutional setting. I agree with the Hearing Officer's findings that, under the statutory and regulation provisions, the beneficiary's hospitalization from March 17, 1981, through April 23, 1981, was not appropriate medical care and, therefore, was not medically necessary.

The provider believes this period of hospitalization was necessary for specific food and drug challenges, use of a special care unit objectively to document reactions of this patient, and to convince his mother that she should have less investment in the patient's condition. However, the facts and medical reviewers' opinions indicate that this period of hospitalization was not medically necessary and was above the appropriate level of care. Specifically, I am persuaded by the opinions of the medical reviewers that the total length of stay for nine weeks was not medically necessary. The initial four weeks were medically necessary; however, the need to keep this patient longer than four weeks was not documented.

As noted by the Hearing Officer, the testimony of the hospital's Director of Clinical Services, Department of Pediatrics, also characterized a distinction between the first four weeks of

hospitalization and the last five weeks. That is, he testified that the first four weeks of hospitalization were "strictly understanding whether there was a medical problem or not, and deciding what treatment was necessary or what problem there was" As concerns the last five weeks, he stated that the hospitalization was for "clarifying and getting an understanding of the psychosocial issues so we could make recommendation for treatment upon discharge" Finally, the Director of Clinical Services testified that, in his opinion, the patient could have been discharged after the first four weeks of hospitalization and sent home for administration of the food and drug challenges as an outpatient. However, in his opinion, such a course of treatment would have meant that the set of therapeutic recommendations proffered by the hospital would have failed due to the special circumstances presented by the patient.

As a result of my review of the entire record, I find the appealing parties have failed to support the medical necessity of the hospitalization at the Hospital and Research Center from March 17, 1981, through April 23, 1981. While this child may have required some testing for his asthmatic condition, the final five weeks of hospitalization were primarily to clarify and obtain an understanding of psychosocial issues, were not medically necessary, and were above the appropriate level of care. As stated by the medical reviewers, outpatient testing should have been the preferred method of care. The hospitalization from March 17, 1981, through April 23, 1981, does not meet the requirements of the Department of Defense Appropriations Act or the CHAMPUS regulation and is not authorized CHAMPUS care.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that hospitalization at the Hospital and Research Center from February 17, 1981, through March 16, 1981, (approximately \$10,125.50 in billed charges) may be CHAMPUS cost-shared; however, the inpatient care from March 17, 1981, through April 23, 1981, (approximately \$6,364.50 in billed charges) is denied CHAMPUS coverage because the inpatient care was not medically necessary, was above the appropriate level of care, and is excluded from CHAMPUS Basic Program benefits. Having found that the hospitalization from March 17, 1981, through April 23, 1981, is not a covered benefit, recoupment action is appropriate to recover any funds erroneously paid to the Hospital and Research Center. Therefore, the Director, OCHAMPUS, is directed to review the claims records and take appropriate action pursuant to 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 F. Beary, III, M.D.
Acting Assistant Secretary