ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT
SECRETARY OF DEFENSE (HEALTH AFFAIRS)
UNITED STATES DEPARTMENT OF DEFENSE

SEP 29 1983

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) FILE 83-24
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 83-24 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party in this case is a 57-year-old beneficiary of the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) as the spouse of a 100% disabled veteran. The beneficiary was represented at the hearing by her husband.

CHAMPVA is administered under the same or similar limitations as the medical care furnished certain beneficiaries of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). By agreement between the Administrator, Veterans Administration, and the Secretary of Defense, pursuant to the provisions of Title 38, United States Code, Section 613, CHAMPVA claims are processed and appealed under rules and procedures established by the CHAMPUS regulation, DoD 6010.8-R.

The appeal involves a question of CHAMPVA coverage of inpatient care provided the beneficiary from March 8, 1981 through March 27, 1981. The total hospital charge incurred by the beneficiary for these dates was $4,107.10. The CHAMPUS fiscal intermediary, after applying the appropriate cost-shares and deductibles, paid $2,235.37. This amount represents laboratory tests, pharmacy services, physicians' services, psychological testing, occupational therapy, orthotics and physical therapy, and charges for a private room. The fiscal intermediary denied $1,126.60 in other services based on the determination that the length of stay was excessive and that barbells for exercising were not a benefit under the CHAMPUS regulation.

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. The amount in dispute is $4,107.10 which represents the total amount billed for the inpatient care and related services.

It is the Hearing Officer's recommendation that CHAMPVA coverage for inpatient care from March 8, 1981, through March 27, 1981, be denied as not medically necessary, above the appropriate level of care, and not authorized under CHAMPUS/CHAMPVA benefits. 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 CHAMPVA payment for care and services rendered from March 8, 1981, through March 27, 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 deny CHAMPVA coverage for inpatient care from March 8, 1981, to March 27, 1981. The decision to deny coverage from March 8, 1981, through March 27, 1981, is based on the findings that such care was excluded care, not medically necessary, and above the appropriate level of care.

FACTUAL BACKGROUND

The beneficiary, a 57-year-old spouse of a 100% disabled veteran, has a history of arthritic-type symptoms beginning in 1974 with problems with low back pain. She was referred to the Institute for Rehabilitation on March 14, 1978, and again in 1980 by her physician. This physician stated that the beneficiary had been treated with Enseals, Fiorinal, and Celestone or Kenalog injections and that she had a positive RA and hyperthrophic arthritic changes of the lumbosacral spine.

The admission note for the March 8, 1981, inpatient care indicated that this was a readmission for this patient and that since 1974 pain had extended from low back to include most of the joints of the upper and lower extremities including the shoulders and hips. Her medical history indicates that she has had periodic bladder neck obstructions which required dilatation and possible toxic hepatitis. Prior to her inpatient admission on March 8, 1981, the beneficiary experienced a reoccurrence of arthritic symptoms with increased intensity and locations making independent function difficult.

The beneficiary was admitted to the Institute for Rehabilitation on March 8, 1981, for diagnostic studies, rehabilitative evaluation, and therapy. The admitting diagnosis was rheumatoid arthritis and the physical examination was reported as follows:

> "General physical examination was relatively unremarkable. The patient's head, neck, breast and lungs were considered normal. The shoulders revealed good range but pain interfered with strength and endurance. Palpation revealed tenderness of the left proximal humerus and the posterior right

shoulder joint. Pain in the cervical spine prevented active tilt and rotation of the head to the right. Passive range of motion of the cervical spine demonstrated good range however tenderness of the cervical and dorsal spine was observed on palpation. Pain on ranging was noted in the hips, knees, and mildly so in the ankles but good range of motion was maintained. The patient had recently had a bladder neck dilatation and experienced no problems with her bladder."

The admitting physician developed the goals of hospitalization and diagnostic studies to evaluate for rheumatoid disease as well as an active preventive rehabilitation program to regain physical function through increase in muscle strength and endurance, increase in range of affected joints, reduction of pain, and development of work tolerance. The program established for this beneficiary included hot packs, whirlpool bath and pool therapy, and general strengthening. Self range of motion and exercise were to be evaluated and reviewed. Occupational therapy included plans for a program of ranging and strengthening of the upper extremities with review of principals of joint protection and work simplification with energy conservation. When admitted, the attending physician estimated the duration of hospitalization to be three to four weeks.

On March 13, 1981, the patient received a psychological consultation with a behavioral specialist. The consultant observed that the patient was a very well adjusted person, with no indication of psychosis, neurosis, or psychopathy. The beneficiary was calm, cooperative, congenial and highly motivated concerning her rehabilitation and overall adjustment to life. The consultant indicated that the beneficiary had no psychological distress. He indicated that her psychological prognosis was very good. His assessment was that there were no problems as of admission. He felt the patient was functioning at a superior level of intellectual ability. The MMPI psychograph indicated a very well-adjusted individual with many good qualities. He recommended that the beneficiary be observed by the psychology department on an infrequent basis for supportive counseling to help the patient in any way that the patient deemed necessary.

On March 18, 1981, the attending physician and physician's assistant noted that the patient should continue with pool and whirlpool baths, hot packs and paraffin baths. They indicated that range of motion had improved in pool and paraffin baths and the beneficiary had increased flexibility of the hands. Massaging of the shoulder muscles and mobilization had resulted in a decrease in shoulder pain. Some trigger points had been noted indicating tendonitis. Use of the AK table and William's exercises continued. A lumbosacral garment was ordered for back positioning and support. Occupational therapists had completed their review of principals of joint protection, work simplification and energy conservation. In their opinion, the

beneficiary had become well versed in self-exercises and was performing them independently. The physician, at this conference set a discharge date of March 27, 1981.

At a conference held on March 25, 1981, the physician and physician's assistant reported that the patient's use of the pool and whirlpool baths, hot packs and paraffin baths had provided very good results for increased range of motion and decreased joint pain. They also noted that trigger point tenderness had decreased indicating some improvement in the tendonitis. The beneficiary was well structured in William's exercises, and a lumbosacral garment was obtained for support and posture. The beneficiary's general strength, flexibility and function had improved during her therapy and pain was noted to be considerably less. The physician stated that the discharge date for this patient would be March 27, 1981.

On discharge, the attending physician and physician's assistant noted the patient was well indoctrinated in joint protection, work simplification, energy conservation, and Williams exercises. General strength had improved and reduction of joint and back pain was accomplished. When discharged, the patient was prescribed Premarin. The discharge diagnosis was rhumatoid arthritis with a complication of tendonitis in both shoulders.

The beneficiary filed a CHAMPVA claim for the 19-day period of hospitalization. The claim form indicates that the daily charge for the 19 days was at the private room rate of $140.00, whereas the semi-private rate was $132.00 per day. The fiscal intermediary approved the claim for the 19-day hospitalization in the private room, plus laboratory services, drugs and medical services, and dressing and cast. The fiscal intermediary denied $1,126.60 for inpatient services because the inpatient stay was determined to be expensive, and the cost of supplying barbells to the patient was determined not to be an authorized CHAMPUS benefit. Therefore, the fiscal intermediary issued a check to the beneficiary in the amount of $2,235.30 after deducting the patient's cost-share.

The attending physician, on June 8, 1981, communicated with the fiscal intermediary requesting reconsideration of the fiscal intermediary's decision to deny some of the services claimed by the beneficiary. The attending physician, in that correspondence, indicated that the hospitalization from March 8, 1981, through March 27, 1981, was for an intensive program of physical therapy and for treatment of pain in joints of the extremities, hips and shoulders due to rheumatoid arthritis. The physician indicated that the beneficiary made considerable progress and that this full course of treatment was required to treat trigger point shoulder pain and for general strengthening and increased endurance.

The fiscal intermediary conducted an informal review to determine whether the disallowance of the $1,126.60 was proper under the applicable laws and regulations. At the conclusion of that review, the fiscal intermediary determined that the disallowance

was proper; however, they informed the beneficiary that the claim was subject to a higher level of review for reconsideration. The reconsideration review conducted by the fiscal intermediary upheld the original informal review on the basis that there was no additional medical documentation indicating that the $1,126.60 was subject to CHAMPUS cost-share. The sponsor appealed the decision of the reconsideration review.

In the course of the appeal, OCHAMPUS referred this case to the Colorado Foundation for Medical Care for medical review. The two reviewing physicians have medical specialties in occupational medicine and internal medicine. As a result of their review of the case file, these physicians were of the opinion that the physical documentation in this case did not indicate the patient had a problem with acute joints. The beneficiary's range of motion was generally good and the physical examination prior to the hospitalization was essentially normal except for the pain in the joints. It was their opinion that it was not medically necessary for this patient to be admitted for any inpatient treatment. In their opinion they considered the barbells and corset to be medically necessary for the strengthing of the joints and for protection. With respect to the private room, it was their opinion that the file did not document the medical necessity for a private room. Further, they indicated that the inpatient setting for this beneficiary was not justified nor was the hospitalization medically necessary for the treatment of the beneficiary's condition. It was their opinion that these services could have effectively been provided on an outpatient basis. These physicians also indicated that the laboratory studies were sufficiently documented and that they were appropriate and medically necessary as well as the supplies furnished to this beneficiary. However, the pharmacy services were not sufficiently documented and therefore not medically necessary with the exception of Premarin prescribed at discharge. They were also of the opinion that the psychological testing was appropriate even though it was not extensive because this beneficiary was relatively well adjusted and oriented. However, in their opinion, an interview of this type is appropriate when the patient suffers from chronic pain. The occupational therapy and physical therapy conducted at the hospital could have been provided to the beneficiary in a safe and effective manner on an outpatient basis; thus hospitalization was not required.

Based on the medical review and the documentation in the file, the OCHAMPUS First Level appeal decision stated that the inpatient services provided during the period of March 8, 1981, through March 27, 1981, were above the appropriate level of care and not medically necessary and thus were not an authorized CHAMPUS benefit. Because the decision found that none of the inpatient care was medically necessary, the fiscal intermediary was instructed to recoup payments made for the portion of the claim paid in error during this hospitalization as well as erroneous payments paid for inpatient services provided in 1978 and 1980.

Because of this decision, the sponsor requested a hearing. A hearing was held by , Hearing Officer, on March 31, 1983. The attending physician testified at the hearing and stated that the goal of the treatment program was preventive and remedial. The program which was outlined for this beneficiary sought to reduce her pain and prevent further deterioration of her condition through a treatment program that incorporated both passive and active physical and occupational therapy, massages, heat treatment, range of motion exercises, and whirlpool baths. It is significant to note that the attending physician agreed with the findings of the medical review that the treatment received by the beneficiary at this institution could have been provided on an outpatient basis. The attending physician further agreed with the comments of the medical review that the private room was unrelated to the beneficiary's treatment.

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 for Rehabilitation from March 8, 1981, through March 27, 1981, is authorized care under CHAMPVA. In resolving this issue it must be determined (1) whether the care and services for the period in issue were medically necessary, (2) whether the care for the period in issue was at the appropriate level of care, (3) whether the private room for the period in issue was medically necessary.

Medical Necessity/Appropriate Level of Care

The Department of Defense Appropriations Act, 1981, Public Law 96-527, prohibits the use of CHAMPUS funds for ". . . any service 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.

Department of Defense Regulation DoD 6010.8-R, in paragraph B.104, chapter II, 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."

As previously noted, CHAMPVA is administered on the same or similar limitations as the medical care furnished certain beneficiaries of CHAMPUS. Therefore, CHAMPVA claims are processed and appealed under rules and procedures established by the CHAMPUS law and regulation. Under these statutory and regulatory provisions, the inpatient care in question must be found to be medically necessary (essential) for the care or

treatment of a diagnosed condition. A thorough review of the hearing file of record leads me to conclude that hospitalization for the period of March 8, 1981, through March 27, 1981, was not medically necessary in the treatment of this patient. Specifically, the file in this case fails to indicate that the condition of this beneficiary was so acute that it necessitated hospitalization. Although it is noted that this patient was experiencing pain and tenderness of the spine, shoulder joints, hips, knees and ankles, there is nothing in the admission note which indicates that these conditions were so acute or so severe as to necessitate hospitalization. Further, the treatment program of hot packs, whirlpool baths, pool therapy, general strengthening, self range of motion exercises and Williams exercises could have been provided on an outpatient basis. The record fails to document that the physical condition necessitated hospitalization. In fact, both the admitting physical examination and the subsequent psychological evaluation indicated this beneficiary was otherwise very healthy and well balanced.

The Hearing Officer concluded that the medical evidence supported the use of physical therapy as an appropriate medical response to the beneficiary's rheumatoid arthritis; however, the record failed to establish the medical necessity for inpatient care. In this regard, the attending physician testified as a witness at the hearing and agreed with the opinion of the OCHAMPUS medical reviewers that treatment received by the beneficiary could have been provided on an outpatient basis. In addition, the Hearing Officer noted that the beneficiary continued a therapy program on an outpatient basis after the inpatient stay.

I agree with the Hearing Officer's conclusion in this matter. While inpatient care may have provided the opportunity for a more concentrated treatment regimen, that fact alone does not make inpatient care the appropriate level of care. I find that the record fails to document the medical necessity of the inpatient care at [redacted] for Rehabilitation from March 8, 1981, through March 27, 1981. While this beneficiary may have required therapy for her rheumatoid arthritis, inpatient care was not essential in the treatment of the patient's medical condition and was above the appropriate level of care. Therefore, I adopt the Hearing Officer's Recommended Decision to deny CHAMPVA coverage of the beneficiary's inpatient care from March 8, 1981, through March 27, 1981.

Under DoD 6010.8-R, chapter IV, G.3., "(s)ervices and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide medical care . . ." are specifically excluded from CHAMPVA coverage. The only exception for coverage is that provided under DoD 6010.8-R, chapter IV, G.5., as follows:

> "G. Exclusions and Limitations. In addition to any definitions, requirements, conditions

and/or limitations enumerated and described in other chapters of this Regulation, the following are specifically excluded ...

*

*

*

5. Diagnostic Admission. Services and supplies related to an inpatient admission primarily to perform diagnostic tests, examinations, and procedures that could have been, and routinely are, performed on an outpatient basis.

NOTE: If it is determined that the diagnostic x-ray, laboratory and pathological services and machine tests performed during such admission were medically necessary and would have been covered if performed on an outpatient basis, [CHAMPVA] benefits may be extended for such diagnostic procedures only, but cost-sharing will be computed as if performed on an outpatient basis."

In view of the finding that the inpatient care was above the appropriate level of care and not medically necessary, the Regulation requires denial of all services and supplies related to the unauthorized inpatient care with the exception of medically necessary diagnostic services. Therefore, the Director, OCHAMPUS is directed to review the claims involved in this care to determine the portion of the charge related to medically necessary diagnostic/laboratory services. Those charges may be cost-shared on an outpatient basis, but all other inpatient charges are excluded from CHAMPVA coverage. The Director, OCHAMPUS, then, should take appropriate action under the Federal Claims Collection Act regarding any erroneous payments made in this case.

Inpatient Room Accommodation

In the event inpatient care in this case had been determined to qualify for CHAMPVA coverage, Department of Defense Regulation DoD 6010.8-R, in paragraph B.5.a, chapter IV, limits the extent to which CHAMPVA will cost-share inpatient room accommodations. Under this provision CHAMPVA defines a private room as "... a room with one (1) bed and which is designated as a private room by the hospital or other authorized institutional provider." The Hearing file indicates that a private room was provided for this beneficiary; however, there is no documentation indicating the need for this room. Under the above cited Regulation the reasonable cost of a private room is covered only when certain conditions are satisfied. These conditions are:

"(a) where its use is medically required and when the attending physician certifies that a private room is medically necessary for the proper care and treatment of a patient; and/or

(b) when a patient's medical condition requires isolation;

(c) or when a patient (in need of immediate inpatient care but nor requiring a private room) is admitted to a hospital or authorized institution which has semi-private accommodations, but at the time of admission, such accommodations are occupied; or

(d) when a patient is admitted to an acute care hospital (general or special) without semi-private rooms."

The file in this case fails to document the need for a private room. Specifically, there is no attending physician certificate indicating that a private room was medically necessary for the proper care and treatment of this beneficiary. In fact, the record is quite clear in establishing that the beneficiary spent much of her time outside of the room participating in whirlpool baths and other forms of therapy. It is clear that this beneficiary's medical condition did not require isolation and there has been no evidence to establish that a semi-private room was unavailable. In addition, the OCHAMPUS medical reviewers opined that a private room was not necessary in this case and the attending physician agreed with this opinion during her testimony at the hearing. Based on the testimony, documentation, and professional opinions I find that the use of a private room for this period of hospitalization was not medically necessary, above the appropriate level of care and specifically excluded under the applicable regulation because it did not meet the requirements which authorize coverage of a private room.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the inpatient care at the for Rehabilitation for the dates March 8, 1981, through March 27, 1981, be denied CHAMPVA coverage as the care was not medically necessary and was above the appropriate level of care. However, I do concur with the Hearing Officer and find that the diagnostic x-ray, laboratory and pathological services, and machine tests performed were medically necessary and can be cost-shared by CHAMPVA. The remainder of the charges for this period of inpatient care are denied, along with the beneficiary's appeal. The Director, OCHAMPUS, is instructed to review the claims records in this case and, if necessary, take appropriate action under the Federal

Claims Collection Act with regard to any erroneous payments. 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