



ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

DEC 9 1983

HEALTH AFFAIRS

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

Appeal of)
Sponsor:) OASD(HA) FILE 83-37
SSN:) FINAL DECISION

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 83-37 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the wife of a retired officer of the United States Navy Reserve. The appeal involves the issue of CHAMPUS cost-sharing of inpatient hospitalization and physician charges from June 19 through July 22, 1981. The amount in dispute is \$2,586.73.

The hearing file of record, the Hearing Officer's Recommended Decision, and the Analysis and Recommendation of the Director, OCHAMPUS, have been reviewed. The Hearing Officer recommended denial of CHAMPUS cost-sharing based on findings the care was domiciliary and was provided above the appropriate level of care. The Director, OCHAMPUS, concurs in the Recommended Decision and recommends its adoption as the FINAL DECISION by the Assistant Secretary of Defense (Health Affairs).

The Acting Principal Deputy Assistant Secretary of Defense (Health Affairs), acting as the authorized designee for the Assistant Secretary, after due consideration of the appeal record, adopts the Hearing Officer's Recommended Decision. The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is therefore to deny CHAMPUS cost-sharing of the inpatient hospitalization and physician charges for care furnished from June 19 through July 22, 1981, as excluded domiciliary care and as care provided above the appropriate level.

FACTUAL BACKGROUND

The beneficiary was admitted to Hospital, on June 4, 1981, after sustaining a fall on her right leg and both hands. The diagnosis was a depressed fracture of the lateral tibial plateau, right leg, and a long leg cast was applied. The beneficiary was instructed in the use of a walker on June 15, 1981; however, according to her physician, she was

unable to continue use of the walker past June 17, 1981, because of pre-existing carpal tunnel syndrome in both hands which was apparently aggravated by the fall.

On June 18, 1981, a hospital social worker visited the beneficiary due to the beneficiary's concern about the physician's recommendation that she be discharged from the hospital. The beneficiary related to the social worker that her husband had suffered three heart attacks, was recovering from the most recent attack, and was unable to help her at home. In addition, she had recently moved to a new apartment and nothing was unpacked. The progress notes additionally quote the beneficiary as stating that if her physician refused to certify continued hospitalization, she could pay the bill herself because she would not go home. Although the attending physician agreed to write a letter to CHAMPUS to request extension of her stay, he stated that he was unsure if her condition would qualify.

At the hearing, the sponsor testified he telephonically contacted the then CHAMPUS Fiscal Intermediary for _____, Blue Cross/Blue Shield of _____, to request their advice, and that the fiscal intermediary referred the sponsor to the CHAMPUS Handbook and its requirements for requesting extended hospitalization. According to the sponsor, the fiscal intermediary stated it was possible for the beneficiary to stay in the hospital all summer if necessary.

The sponsor further stated that the admitting physician requested an extension of hospitalization on June 22, 1981. The appeal file includes a case report from the attending physician dated June 22, 1981; however, there is no indication how and when the fiscal intermediary received this report.

The leg cast was removed on June 26, 1981, and on July 2, 1981, the attending physician noted the knee moved well but the beneficiary was still unable to use a walker due to pain in her hands from aggravation of the carpal tunnel syndrome. The medical records, however, reveal occasional use of a walker although the beneficiary was extremely reluctant to try. X-rays of the knee on June 16 and June 22, 1981, revealed a stable position.

The beneficiary complained of pain in her knee while hospitalized from June 19 through July 22, 1981, but no skilled nursing care is documented in the record. In addition, the beneficiary testified at the hearing she received no physical therapy during the period in issue and that nursing services consisted of assistance to the commode. She was discharged to home on July 22, 1981.

On July 29, 1981, the sponsor, on behalf of the beneficiary, submitted a request to OCHAMPUS for authorization for extended hospitalization. By letter dated August 25, 1981, OCHAMPUS advised the sponsor that it does not review care provided during

the first 90 days of hospitalization and that claims for services during this 90-day period should be submitted to the CHAMPUS Fiscal Intermediary.

CHAMPUS claims for the hospital charge of \$5,444.60 and the attending physician's fee of \$1,095.00 were submitted to the CHAMPUS Fiscal Intermediary. The fiscal intermediary initially allowed \$5,030.60 on the hospital claim after deducting \$414.00 in charges for a private hospital room. A CHAMPUS payment of \$3,697.49 was issued to the hospital after deducting a hospital discount from the 75% CHAMPUS cost-share (\$3,772.95).

The attending physician's charges totaled \$1,095.00, of which the fiscal intermediary disallowed \$14.00 as exceeding the reasonable charge profile. A payment of \$810.75 was issued to the beneficiary, representing the CHAMPUS 75% cost-share.

Following review of the medical records by the fiscal intermediary's claims review department, the fiscal intermediary determined that continued hospitalization after June 18, 1981, should not have been cost-shared by CHAMPUS. The fiscal intermediary issued a revised explanation of benefits denying all hospital charges for care received from June 19, 1981, through July 22, 1981, and obtained a refund of \$2,357.29 from the hospital. Subsequently, the fiscal intermediary determined that the x-ray and drug charges incurred after June 18, 1981, should have been cost-shared on an outpatient basis and that a CHAMPUS payment of \$141.81 was due on the hospital claim. Therefore, the amount in dispute for hospitalization after June 18, 1981, is \$2,215.48; i.e., the CHAMPUS amount originally paid for the hospitalization from June 19, 1981, through July 22, 1981, and refunded by the hospital (\$2,357.29) less the CHAMPUS cost-share of the x-ray and drug charges incurred after June 18, 1981, which CHAMPUS will pay (\$141.81).

Based on the case review by the claims review department, the fiscal intermediary also determined that the attending physician's care directly related to the unauthorized hospitalization should not have been cost-shared by CHAMPUS. The fiscal intermediary, then, denied \$495.00 in hospital visit charges after June 18, 1981, leaving an allowable physician fee of \$586.00 for the first 14 days of hospitalization. The CHAMPUS 75% cost-share of the physician's fee for the first 14 days of hospitalization is \$439.50, resulting in an erroneous payment to the beneficiary of \$371.25 for the last 34 days of hospitalization.

The total amount in dispute is \$2,586.73. It consists of the \$2,215.48 amount in dispute on the hospital charge for care from June 19, 1981, through July 22, 1981, and the \$371.25 amount in dispute on the physician's fees for services directly related to the last 34 days of hospitalization.

The beneficiary appealed the partial denial of CHAMPUS cost-sharing, and the fiscal intermediary affirmed the denial upon Informal and Reconsideration Reviews based on the finding the care was domiciliary after June 18, 1981. The beneficiary appealed to OCHAMPUS, and the OCHAMPUS First Level Appeal decision also affirmed the denial of care on the bases the hospitalization was domiciliary and above the appropriate level of care. The beneficiary, as represented by her sponsor, requested a hearing, and the hearing was held on July 26, 1983, at _____, before _____, Hearing Officer. The Hearing Officer has issued her Recommended Decision and all prior levels of administrative appeal have been exhausted. Issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are (1) whether the inpatient hospitalization from June 19 through July 22, 1981, was domiciliary and (2) whether the care was provided above the appropriate level.

Domiciliary Care

Under 10 U.S.C. 1077(b)(1), domiciliary care is excluded from CHAMPUS coverage. The Department of Defense Regulation governing CHAMPUS, DoD 6010.8-R, implements this exclusion in chapter IV, E.13., as follows:

"13. Domiciliary Care. The statute under which CHAMPUS operates also specifically excludes domiciliary care. This is another area that is often misunderstood by beneficiaries (and sponsors).

"a. Definition of Domiciliary Care. Domiciliary Care is defined to mean inpatient institutional care provided the beneficiary, not because it is medically necessary, but because the care in the home setting is not available, is unsuitable and/or members of the patient's family are unwilling to provide the care. Institutionalization because of abandonment constitutes domiciliary care.

"b. Examples of Domiciliary Care Situations. The following are examples of domiciliary care for which CHAMPUS benefits are not payable.

"(1) Home Care is Not Available. Institutionalization primarily because parents work, or extension of a hospital stay beyond what is medically required because the patient lives alone, are examples of

domiciliary care provided because there is no other family member or other person available in the home.

"(2) Home Care is Not Suitable.

Institutionalization of a child because a parent (or parents) is an alcoholic who is not sufficiently responsible to care for the child, or because someone in the home has a contagious disease, are examples of domiciliary care being provided because the home setting is unsuitable.

"(3) Family Unwilling to Care for Individual in the Home. A child who is difficult to manage may be placed in an institution, not because institutional care is medically required, but because the family does not want to handle him or her in the home. Such institutionalization would represent domiciliary care, i.e., the family being unwilling to assume responsibility for the child.

"c. Benefits Available in Connection With a Domiciliary Care Case. Should the beneficiary receive otherwise covered medical services and/or supplies while also being in a domiciliary care situation, CHAMPUS benefits are payable for those medical services and/or supplies in the same manner as though the beneficiary resided in his or her own home. Such benefits would be cost-shared as though rendered to an outpatient.

"d. General Exclusion: Domiciliary Care is institutionalization essentially to provide a substitute home - not because it is medically necessary for the beneficiary to be in the institution (although there may be conditions present which have contributed to the fact that domiciliary care is being rendered). CHAMPUS benefits are not payable for any costs/charges related to the provision of domiciliary care. While a substitute home and/or assistance may be necessary for the beneficiary, domiciliary care does not represent the kind of care for which CHAMPUS benefits can be provided."

Applying this authority to the facts in this appeal, the Hearing Officer concluded the hospitalization from June 18 through

July 22, 1981, was domiciliary and thereby excluded from CHAMPUS coverage. Following my review of the record in this appeal, I agree and adopt the Hearing Officer's findings on this issue.

The Recommended Decision details the relevant evidence in this appeal. There appears to be no real dispute on the reason the beneficiary remained in the hospital. The attending physician, beneficiary, and sponsor all have stated the reason for the hospitalization was the absence of anyone to care for the beneficiary at home. Her spouse had just been released from the hospital following a heart attack and his physician confirmed the sponsor's inability to care for the beneficiary. The beneficiary had recently moved to a new apartment and had not unpacked the boxes which prohibited her use of a wheelchair. All the medical records substantiate the attending physician recommended discharge to the beneficiary on June 18, 1981, but she voluntarily remained in the hospital as she did not wish to go home due to her husband's condition, the condition of their apartment, and her inability to use a cane or a walker. The record also indicates her reluctance to attempt use of the walker despite encouragement from the hospital staff.

Further, the records indicate the beneficiary stated she would pay for the hospital charges if her physician would not certify her continued stay. In the discharge summary, the physician clearly stated the reason for the continued hospitalization was the absence of someone to care for her at home.

Medical review by physicians associated with the Colorado Foundation for Medical Care, specialists in orthopedic surgery and internal medicine, resulted in opinions that the care could have been provided in the home and the only reason for the hospitalization was inability of the sponsor to provide the home care. No medical necessity for the hospitalization was noted. The Hearing Officer found the medical records reveal no skilled nursing services were provided subsequent to June 18, 1981, and I agree.

At the hearing, the sponsor and beneficiary testified as to additional problems with her knee and the lack of adequate treatment received at the hospital. However, the records do not confirm significant problems. The record indicates the hospital social worker discussed alternatives to hospitalization including private sitters and hiring someone to get the apartment in order. None of these alternatives were acceptable to the beneficiary, and she elected to stay in the hospital. Her decision is supported only by the home situation, not by medical reasons.

In summary, I adopt the Hearing Officer's finding that the care was domiciliary. Specifically, I find the inpatient care after June 18, 1981, was provided because care in the home setting was not available and was unsuitable due to her husband's physical condition. In addition, I find that the hospitalization was essentially to provide a substitute home and was not medically necessary. Therefore, the hospitalization provided June 19

through July 22, 1981, is excluded from CHAMPUS coverage as domiciliary care. I also find the physician's charges for daily hospital visits after June 18, 1981, are excluded from CHAMPUS coverage as this care was directly related to the domiciliary care and would not have been required had the beneficiary been in the home setting. I find, however, that x-rays and drug charges provided June 19 through July 22, 1981, would have been paid on an outpatient basis and are CHAMPUS authorized benefits. Appropriate adjustment will be directed in the hospital payments.

Private Inpatient Room

Finally, the record reveals that the hospital charge included private room charges which are generally excluded from CHAMPUS coverage. In accordance with the CHAMPUS regulation, DoD 6010.8-R, chapter IV, B.5.a., the reasonable cost of a private room is covered only:

"(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; or

"(c) When a patient (in need of immediate inpatient care but not requiring a private room) is admitted to a hospital . . . 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.

As no facts appear in this appeal to justify the private room under CHAMPUS criteria, I find these services were correctly disallowed by the CHAMPUS Fiscal Intermediary.

Appropriate Level of Care

Under DoD 6010.8-R, chapter IV, 3.1.g., institutional care must be at the appropriate level required to provide the medically necessary treatment to be cost-shared under CHAMPUS. Services and supplies related to inpatient stays above the appropriate level are excluded from coverage. (DoD 6010.8-R, chapter IV, G.3.)

The evidence in this appeal, as discussed above, clearly establishes that an inpatient setting was not required for the treatment of the appealing party subsequent to June 18, 1981. The Hearing Officer found the care after that date was above the

appropriate level and excluded from CHAMPUS coverage. I adopt this finding. The inpatient care and physician charges from June 19 through July 22, 1981, are, therefore, also excluded from CHAMPUS coverage because the inpatient care was above the level of care required to provide medically necessary treatment.

SECONDARY ISSUE

Absence of Advice from CHAMPUS

In submissions for the record and testimony at the hearing, the sponsor contended the reason for the hospitalization was the failure of the fiscal intermediary to respond to the "request" for extended hospitalization dated June 22, 1981. Three facts pertinent to this contention, however, are: (1) the "request" was apparently a report from the physician; (2) the appeal file does not evidence when this report was received; and, (3) the actual request for extended hospitalization approval is dated July 29, 1981, 7 days after the beneficiary was discharged.

In addition, I do not find the sponsor's testimony credible on this point. The record clearly indicates the beneficiary elected to stay in the hospital for the reasons set forth above and stated she would pay the bill if her physician did not certify her continued stay. This evidence of record strongly indicates any failure to respond to an inquiry was not the reason for the stay especially since her decision to remain in the hospital was made 4 days before the physician wrote his "request."

The sponsor also testified he contacted the fiscal intermediary and was advised it was possible for the beneficiary to stay in the hospital all summer if necessary. Without undue reliance on the sponsor's recollection, this testimony does not equate with an unequivocal grant of authority for the continued hospitalization. The Hearing Officer correctly determined that the Department of Defense is not bound by erroneous statements of its agents; i.e., estoppel does not generally apply against the United States. Many decisions of this office have confirmed this position.

In the present case, however, there is no showing of any misstatements by the fiscal intermediary as required if estoppel is applicable. Apparently, the sponsor, as he testified, was referred to the CHAMPUS Handbook for the procedure to request extended hospitalization. On July 29, 1981, he followed this procedure and was correctly advised such requests are not necessary unless the inpatient care will exceed 90 days. Herein, the sponsor's major contention is that the fiscal intermediary should have advised him care was not covered. Even if the fiscal intermediary had received the June 22, 1981, physician "request" promptly, a response was not possible immediately as no medical information was apparently provided until July and August 1981. Further, preauthorization, as the sponsor was advised, is not available for inpatient care of less than 90 days.

CHAMPUS is basically an "at risk" program. That is, claims are submitted after care is rendered and a decision is made at that time whether cost-sharing will be provided. Only in limited situations is preauthorization available. One of these situations is hospitalization beyond 90 days. Neither the fiscal intermediary nor OCHAMPUS reasonably can be expected to authorize inpatient care based on telephone calls.

In summary, I find the argument that OCHAMPUS either erroneously advised the beneficiary or failed to adequately advise the beneficiary to be unsubstantiated and irrelevant to the merits of this appeal.

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to deny CHAMPUS cost-sharing of inpatient care provided June 19 through July 22, 1981, based on findings the care was domiciliary and provided above the appropriate level of care. Only charges for medically necessary x-rays and drugs received during the last 34 days of hospitalization may be cost-shared by CHAMPUS. The Director, OCHAMPUS, is directed to review the claims records in this case and take appropriate action under the Federal Claims Collection Act to recover any erroneous overpayments which have not previously been refunded. Physician charges directly related to this period of hospitalization are also denied on the same basis. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.



Vernon McKenzie

Acting Principal Deputy Assistant Secretary