



ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

17 MAY 1984

HEALTH AFFAIRS

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

Appeal of)
Sponsor:) OASD(HA) File No. 84-04
SSN:) FINAL DECISION

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-04 pursuant to 10 U.S.C. 1071-1092 and DoD 6010.8-R, chapter X. The appealing party is the beneficiary, a retired officer of the United States Air Force. The appeal involves claims for speech therapy undergone by the beneficiary at Spalding Rehabilitation Center, Denver, Colorado, from April 30, 1981, to November 27, 1981. The amount billed for the outpatient speech therapy totaled \$3,468.00; the amount in dispute is \$2,601.00, the 75% CHAMPUS would cost-share if the care was a CHAMPUS benefit.

The hearing file of record, 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 speech therapy services provided to the beneficiary from May 1, 1981, through November 27, 1981, be denied as not medically necessary, as above the appropriate level of care, and as directed, in part, towards an occupational deficit; except that the Hearing Officer recommends CHAMPUS coverage of 1 hour of speech therapy per month to monitor the progress being made by the beneficiary and to provide reinforcement. The Director, OCHAMPUS, concurs in these findings and recommends adoption of the Hearing Officer's Recommended Decision as the FINAL DECISION, with the minor correction of the beginning date of the disputed services being April 30, 1981, rather than May 1, 1981. In addition, though no claims were submitted for December 1981, the record establishes the beneficiary received speech therapy during that month and, therefore, 1 hour of speech therapy during December can be cost-shared upon the submission of a claim showing the December charge.

The Assistant Secretary of Defense (Health Affairs) after due consideration of the appeal record, concurs in the recommendation of the Hearing Officer (with the date correction noted by the Director, OCHAMPUS) and adopts the recommendation of the Hearing Officer to deny CHAMPUS cost-sharing of the beneficiary's outpatient speech therapy from April 30, 1981, through

November 27, 1981, with the exception that 1 hour of speech therapy per month may be cost-shared during this 7-month period. In addition, 1 hour of speech therapy in December is allowable upon submission of a claim.

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to deny CHAMPUS cost-sharing for the beneficiary's speech therapy program from April 30, 1981, through November 27, 1981, with the exception of 1 hour of speech therapy per month during the 7-month period in dispute. This decision is based on findings that the speech therapy program was not medically necessary and was above the appropriate level of care.

FACTUAL BACKGROUND

The record reflects that the beneficiary suffered a stroke on December 20, 1979, and was admitted to Saint Anthony's Hospital. The beneficiary was transferred on January 8, 1980, to the Fitzsimons Army Medical Center and while there underwent a right carotid endarterectomy. He was able to ambulate using a cane when he was discharged to his home on February 16, 1980.

On February 20, 1980, the beneficiary was admitted to the Spalding Rehabilitation Center. The rehabilitation goal was independent self-care, ambulation, and proper communication. His prognosis was considered good and his estimated length of stay was 10 days to 2 weeks at which time it was expected that he would be a good candidate for an outpatient or homebound treatment program. The beneficiary was discharged on March 1, 1980.

For approximately 22 months (March 1, 1980, to December 29, 1981), the beneficiary received outpatient speech/language therapy. Generally, there were three individual sessions per week and an aphasia group session once a week. CHAMPUS cost-shared the beneficiary's claims for speech therapy except for the last four claims which included speech therapy from April 30, 1981, to June 29, 1981, for \$956.25; from July 1, 1981, to September 28, 1981, for \$1,191.75; from September 30, 1981, to October 29, 1981, for \$798.75; and from October 30, 1981, to November 27, 1981, for \$521.25. At the hearing, the beneficiary testified that he continued to go for speech therapy until the end of December 1981; however, no claims have been submitted for the period after November 27, 1981.

The total amount billed for the four claims that were denied is \$3,468.00. Under the appeals process the amount in dispute is calculated as the amount of money CHAMPUS would pay if the services and supplies involved in the dispute were determined to be authorized CHAMPUS benefits. Excluded from the amount in dispute is the beneficiary's CHAMPUS deductible and cost-share amounts. Therefore, the amount in dispute in this appeal is \$2,601.00, after considering the beneficiary's 25% cost-share and the beneficiary's previous satisfaction of his deductible amount. No claim or bill was submitted or included in the appeal record

covering speech therapy received during December 1981; however, the analysis in this decision applies to any speech therapy received in December 1981.

The CHAMPUS Fiscal Intermediary initially returned the claim for speech therapy from April 30, 1981, to June 29, 1981, with a request for submission of progress notes. The claim was disallowed on September 24, 1981, when no progress notes were submitted. Subsequently, the three claims for care covering the period from July 1, 1981, through November 27, 1981, were denied on the basis that the therapy was maintenance in nature and appeared to be educational. Following the automatic reconsideration, the fiscal intermediary denied all four claims from April 30, 1981, to November 27, 1981, on the basis that the speech therapy after April 23, 1981, was maintenance and supportive. Following this denial, the beneficiary appealed to OCHAMPUS.

The OCHAMPUS First Level Appeal determination, dated May 23, 1983, concluded the speech therapy from April 30, 1981, to November 27, 1981, was not medically necessary, was above the appropriate level of care considering the alternative for equivalent gain with home self-exercise, and was addressed to an occupational deficit.

The beneficiary appealed the First Level Appeal determination and requested a hearing. After the hearing, the Hearing Officer obtained additional records from the provider which were not included in the hearing file. The Hearing Officer also obtained additional copies of records previously included in the hearing file but which were not legible.

The hearing record includes copies of certain progress notes which show that a PICA (porch index of communicative ability) test was administered on January 12, 1981. The beneficiary had an overall communicative ability score in the 86th percentile for a brain damaged patient. On February 18, 1981, the PICA test was again administered and the beneficiary improved his communicative abilities rank to the 91st percentile. The progress notes for February 20, 1981, classify the beneficiary's ranking as corresponding to a mild deficit rating for a brain damaged patient. The PICA test administered on March 19, 1981, showed an overall score in the 89th percentile. The speech therapist noted, "results reveal [patient] is maintaining at a mild communicative deficit rating." On April 23, 1981, the PICA test was administered, apparently for the last time. The beneficiary again scored at the 91st percentile for overall communicative abilities "with a corresponding mild deficit rating." The record does not indicate any further PICA tests were administered during the April 30, 1981, to November 27, 1981, period. As of April 27, 1981, the beneficiary was continuing with the speech therapy program four times a week. The June 8, 1981, progress notes state "word retrieval remains a prominent difficulty in both structural sessions [and] in informal conversation." (There were no progress notes for May.)

The progress notes for September 29, 1981, state that possible alternatives for additional social activities including volunteer work were discussed with the beneficiary. The beneficiary was still attending speech therapy four times a week.

The notes for November 2, 1981, indicate the patient's "verbal expression is excellent [with] the exception of periodic halting type of expression due to word retrieval deficit." The notes for November 2, 1981, indicate the adult level test of basic skills (ABLE) was administered to provide a comprehensive picture of the beneficiary's skills for potential employers on a volunteer program basis. The beneficiary surpassed the 9th grade level for all skills (vocabulary, math, and reading) except for spelling. It was approximately at this time that the beneficiary began volunteer work as a teacher's aide at a local elementary school. It was at this point that the therapist noted her hopes to gradually decrease the beneficiary's need to attend speech therapy at Spalding by seeing him at the elementary school with the eventual goal of discharging him upon his success at the school. The notes for November 27, 1981, indicated the beneficiary was working 4 days a week at the elementary school and had expressed an interest in lengthening the amount of work time. His responsibilities included helping children read orally, writing out lesson responses, and handing out musical instruments to children in the music room. The therapist noted the beneficiary appeared to have reached a plateau in his speech therapy.

The concluding progress notes of December 29, 1981, indicate the beneficiary's auditory processing skills were good. He could follow all conversational speech and could handle complex, high level information well. The beneficiary was discharged from speech therapy with a notation to schedule a reevaluation in 3 months. The record does not contain any indication that a reevaluation was made following his discharge.

The record also includes, generally on a monthly basis, outpatient staffing summaries. These were signed both by the speech therapist and a physician, J. W. Kim, M.D. The outpatient staffing sheets with one exception contain no comments by the physician. The summary for August 3, 1981, includes the following physician's comments:

"How long has this patient been in speech therapy? Is continuous therapy indicated?"

The record also contains a letter from Captain Jorge L. Herrera, M.D., a resident in internal medicine at Fitzsimons Army Medical Center. The letter is dated February 9, 1982, and states:

"[The beneficiary] has been under my care since July 1980, at the Internal Medicine Clinic, Fitzsimons Army Medical Center.

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"I see [the beneficiary] in my clinic approximately every four months and each time he shows definite improvement in his ability to ambulate and talk, as compared to his previous visit.

"It is my opinion that the speech therapy that [the beneficiary] is receiving on a weekly basis, is definitely improving his aphasia and therefore should be considered therapeutic instead of maintenance therapy."

The record also includes a June 19, 1982, letter from the beneficiary that stated, "Physicians did prescribe speech therapy for me. First Dr. Yarnell and Dr. Kim treated me at Spalding as an inpatient and then as an outpatient. Following that, Dr. Herrera, Capt USA, Fitzsimons Army Medical Center, prescribed speech therapy for me."

Jerome Gersten, M.D., Medical Director for the Spalding Rehabilitation Center in a May 4, 1982, letter stated:

"Speech therapy was initiated on physician prescription because of brain damage resulting from ischemia due to occlusion of a blood vessel in the brain.

"In July 1981, although the patient had made gains in his verbal and graphic ability to produce communication, he continued to need a structured environment and cueing to initiate speech (therapy or wife). [The beneficiary's] speech at this point was not self-initiated. The treatment goal was to increase the patient's ability to initiate spontaneous speech by the graduated self-cueing technique.

"By September, 1981, patient had shown progress in self-initiation in a structured environment, but only had a limited ability to generalize to other situations.

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"In my opinion, the additional therapy from 7/81-12/81 is justified because it resulted in a significant life-style change, and this change has allowed the patient to become actively involved back into the community."

During the appeal process, the beneficiary's medical records were reviewed by the OCHAMPUS Medical Director. He provided the following medical opinion in a memorandum dated January 21, 1983:

"The speech therapy was addressed to a physical defect, which was the damaged brain associated with speech comprehension, and which was secondary to the cerebrovascular hemorrhage. The record adequately documents that his aphasia and apraxia were associated with his brain hemorrhage.

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"[The Medical Director] would not consider the initial care rendered for this beneficiary (through April 1981) as documented, to be primarily for the restoration of a biological defect. This is determined to be due to the physical injury which resulted in dysfunction associated with areas of the brain related to speech comprehension, formulation, and expression. It is not considered to have been directed at any 'educational or occupational deficit' during this period. Although the therapy provided during the contested period is noted by the provider to be directed at restoration of speech (biological) function, it is also apparent that a major goal during this later period was to prepare this beneficiary for return to some gainful employment. It is apparent that he had achieved maximum return to biological compensatory capacity, having plateaued at the 91% level of communication. Further therapy was directed at refinements in speech articulation which benefited his return to work and could have been reasonably accomplished without the level of intensity of professional care associated with the care provided - i.e., could have been accomplished through professional training of the beneficiary with practice at home.

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"The initial phase of speech therapy (through April 1981) has been provided through adequate treatment planning - consistent with the diagnosis, level of dysfunction, and usual type and course of therapy in such circumstances. However, the therapy during the contested period - while it may have been helpful - was not adequately formulated, documented, justified, or provided consistent with the level of progress. The patient's plateau at the approximate level of 90% communication would reasonably lead to an adjustment in treatment planning to infrequent follow-up sessions in home self-training exercise.

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"Thus, the treatment provided for the period in question is considered excessive, considering the alternative for equivalent gain with home self-exercises, with (3) follow-up speech therapy appointments to reassess progress and to provide reinforcement of instruction and speech training behavior."

At the hearing the beneficiary submitted a statement by Lieutenant Colonel Mary Jane Morrison, M.D., Ph.D., Assistant Chief, Physical Medicine and Rehabilitation Service, Fitzsimons Army Medical Center. She stated:

"[The beneficiary] regained no return of function to his right arm and requires a brace for ambulation. He regained a significant degree of receptive understanding of communication via intensive speech therapy. This necessary therapy was terminated in November 1981 by the family because of a depletion of their funds. At that time, [the beneficiary] still had not regained sufficient expressive communicative abilities to manage even routine simple activities.

"This expressive deficit in communication became a critical problem recently when [the beneficiary] developed acute leukemia. The

treating physicians were often unable to understand his wishes regarding life-threatening treatment, symptoms, needs, etc.

"I feel even now additional speech therapy would help [the beneficiary] better capitalize his good receptive abilities by learning techniques to express himself better and thus greatly enable his oncologist to better manage the leukemia."

A hearing was held on October 13, 1983, at the Fitzsimons Army Medical Center, Aurora, Colorado, before OCHAMPUS Hearing Officer, Hanna M. Warren. The beneficiary attended the hearing and represented himself. The beneficiary's wife also attended the hearing and provided much of the testimony on behalf of the beneficiary. The Hearing Officer has issued her Recommended Decision and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are whether the speech therapy program undergone by the beneficiary from April 30, 1981, to November 27, 1981, was medically necessary and whether it was above the appropriate level of care.

Medically Necessary

The CHAMPUS regulation, DoD 6010.8-R, provides in chapter IV, A.1., as follows:

"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 review of what is meant by the term "medically necessary." The definition in DoD 6010.8-R, chapter II, provides:

"'Medically necessary' means the level of services and supplies (that is, frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury, including maternity and well-baby care. Medically necessary includes concept of appropriate medical care."

The converse of this is the specified exclusion from CHAMPUS coverage in chapter IV, G.1., of "services and supplies which are

not medically necessary for the diagnosis and/or treatment of a covered illness or injury."

Appropriate medical care is defined in chapter II, B.14., as that medical care where 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. The definition goes on to specify that the medical environment in which the medical services are performed must be at the level adequate to provide the required medical care.

And, as specifically concerns the beneficiary's appeal, DoD 6010.8-R, chapter IV, G.46., excludes CHAMPUS coverage of "services of an audiologist or speech therapist except when prescribed by a physician and rendered as a part of treatment addressed to the physical defect itself and not to any educational or occupation deficit."

The record contains the results of four PICA tests that were administered on January 26, 1981; February 20, 1981; March 20, 1981; and April 27, 1981. The beneficiary scored, respectively, in the 86th percentile, the 91st percentile, the 89th percentile, and, again, in the 91st percentile. As a result of these scores, which are generally consistent for this 4-month period, the therapist categorized the beneficiary as having a mild deficit rating for a brain damaged patient. As noted by the Hearing Officer in her Recommended Decision, the medical records show no further PICA testing after April.

The speech therapist's progress notes indicate that in the fall of 1981 the adult level test of basic skills was given. This test was primarily to provide a comprehensive picture of the beneficiary's skills for potential employers (volunteer programs). The Hearing Officer concluded that if active demonstrable changes were taking place as a result of the therapy, testing would have been continued to monitor this progress and for use as a guideline.

The January 26, 1981, progress notes indicate the beneficiary continued to need prodding for initiation of conversation and worked well with structure; however, he needed to continue to establish better initiation for communication interaction. The March progress notes concluded that the results of the PICA tests reveal the patient was maintaining at a mild communicative deficit rating. The notes also indicate the beneficiary was less dependent upon cueing to initiate incentives.

The Hearing Officer noted in her decision that both the speech pathologist who reviewed the records for the fiscal intermediary and the Medical Director of OCHAMPUS found that by the end of April 1981 the beneficiary reached the 91st percentile on the PICA test and that a prognosis should have been advised whereby the beneficiary's family and friends would assist him in practicing the techniques he had learned during the period of

more intensive speech therapy. She noted there was nothing in the record to show this was considered at staffing conference nor is there any mention in the records of a home plan being discussed or the reasons for rejection. She went on to state "a reading of the records shows the therapist was attempting to teach relaxation techniques and cueing techniques to the beneficiary during most of this period." The record supports the conclusion that the beneficiary by the end of April had achieved maximal return to biological capacity having plateaued at the 91st percentile level of communication. Further therapy was directed at refinements in speech articulation which could have been reasonably accomplished without the level of intensity of professional care associated with the care provided.

The Regulation, as quoted above, excludes the services of a speech therapist except when prescribed by a physician and rendered as a part of treatment addressed to the physical defect itself and not to any educational or occupational deficit. The beneficiary in his correspondence claimed that Dr. Yarnell, Dr. Kim, and Dr. Herrera all prescribed speech therapy for him. However, the record contained no copy of such a prescription or order. It is impossible to determine from the record which physician prescribed the speech therapy as there is a complete absence of any comments by the physicians involved as to what their goals were for speech therapy and to what extent they deemed speech therapy necessary. The claims show that Dr. Kim was the attending or admitting physician. The outpatient staffing sheets in the record appear to be signed by Dr. Kim; however, the only time Dr. Kim commented was to write "How long has this patient been in speech therapy? Is continuous therapy indicated?" This is strong evidence that there was no physician prescriptions of the continuing speech therapy.

OCHAMPUS has not contested the medical necessity, or the physicians prescriptions, of the initial speech therapy sessions. In fact, CHAMPUS cost-shared the initial speech therapy services. Prescriptions, however, are not open-ended and there is a need for occasional monitoring of the patient and reaffirming the prescription. In this appeal, no prescription for continuation of the speech therapy during the period in dispute was ever documented.

The letter from Dr. Herrera, the resident in Internal Medicine at Fitzsimons Army Medical Center, stated he saw the beneficiary in his clinic approximately every 4 months and each time he showed definite improvement in his ability to ambulate and talk, as compared to his previous visit. Dr. Herrera did not indicate whether a home maintenance program would also have resulted in continuing improvement by the beneficiary. Nowhere in his letter does Dr. Herrera indicate that he prescribed speech therapy or that he monitored and reviewed the speech therapy.

The record does not establish any direct physician involvement in the beneficiary's therapy during the period in dispute or that a physician prescribed the speech therapy from April 30, 1981, to

November 27, 1981. Because the appealing party has the burden of providing evidence of physicians' prescriptions for the continuation of speech therapy, it is concluded there was none. Therefore, under the Regulation the therapy is specifically excluded.

The record also contains a statement by Dr. Morrison, who at the time was the Assistant Chief, Physical Medicine and Rehabilitation Service at Fitzsimons Army Medical Center. She stated the beneficiary's "expressive deficit in communication became a critical problem recently when the beneficiary developed acute leukemia. The treating physicians were often unable to understand his wishes regarding life threatening treatments, symptoms, needs, etc." She also stated that as of November 1981 the beneficiary "still had not regained sufficient expressive communicative abilities to manage even routine simple activities."

At the hearing it was established that the beneficiary was not a patient of Dr. Morrison; that Dr. Morrison knew the beneficiary only as a result of treating his daughter. Dr. Morrison's opinion that the beneficiary had not regained sufficient expressive communication abilities to manage even routine simple activities is contradicted by his PICA test scores in the 91st percentile, his ability to work as a teacher's aide in an elementary school, and by the speech therapist's discharge notes which state:

"At discharge, [the beneficiary's] auditory processing skills were good. He could follow all conversational speech and could handle complex high level information well."

The Hearing Officer noted that the beneficiary still has a significant speech impairment and that it is possible that continued speech therapy would change and improve that impairment and improve the quality of the beneficiary's life. This, however, does not support a determination that such further improvement is medically necessary; rather, it falls in the category of refinement and maintenance. The Hearing Officer concluded that one follow-up speech therapy visit of 1 hour per month from May through November would have been medically necessary and appropriate to assist and monitor a home therapy program. The OCHAMPUS Medical Director also indicated that infrequent follow-up sessions would be appropriate to assess progress and provide reinforcement of instruction. I agree with and adopt this finding by the Hearing Officer. The follow-up visits would be consistent with the original need for speech therapy even though a specific prescription would be required for the disputed weekly speech therapy undergone by the beneficiary.

The Hearing Officer in the Recommended Decision noted the speech therapy was provided as a benefit under CHAMPUS through April 30, 1981. This is a minor error, as speech therapy was cost-shared

through April 27, 1981. The therapy in dispute is for the period from April 30, 1981, through November 27, 1981. With the minor correction of the beginning date of service in dispute being April 30, 1981, rather than May 1, 1981, I agree with the Hearing Officer that speech therapy was not documented as medically necessary and was above the appropriate level of care except for one follow-up speech therapy visit of 1 hour per month. It is my decision to uphold the First Level Appeal determination and deny CHAMPUS cost-sharing of all speech therapy from April 30, 1981, through November 27, 1981, with the exception that 1 hour of speech therapy per month from May through November is allowable. In addition, though no claim was submitted for December 1981, the record established the beneficiary received speech therapy during December 1981. The analysis in this decision would also apply to the December 1981 therapy; therefore, 1 hour of speech therapy can be cost-shared in December upon the submission of a claim by the beneficiary.

SECONDARY ISSUE

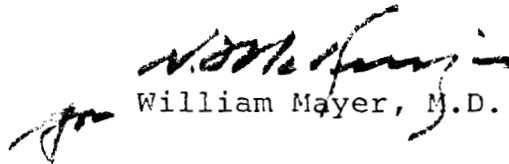
Retroactive Denial

The Hearing Officer in the Recommended Decision noted that another issue raised by the beneficiary at the hearing was the alleged unfairness of being advised in September 1981 that speech therapy benefits were being denied retroactive to April 30, 1981. The Hearing Officer correctly noted that except for specific preauthorization cases, CHAMPUS is an "at risk" program whereby the beneficiary obtains care and submits an after-the-fact claim for processing by the Government or its fiscal intermediaries. Since treatment is a personal choice of the patient, a CHAMPUS claim must be allowed or denied based on the law and regulation governing CHAMPUS. I note that the claim covering the period from April 30, 1981, to June 29, 1981, was signed by the representative for Spalding Rehabilitation Center on July 8, 1981, and date stamped (Julian) as received by the fiscal intermediary on July 11, 1981. Initially, it was returned for lack of documentation and then denied on September 24, 1981. Thus, the claim form indicates that the claim was promptly handled by the fiscal intermediary and any delay is attributable to the provider.

SUMMARY

In summary, it is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) that the speech therapy provided the beneficiary at Spalding Rehabilitation Center from April 30, 1981, to November 27, 1981, was not medically necessary and was above the appropriate level of care, and the claims for this therapy are denied. However, 1 hour of speech therapy per month during the period May through November (i.e., a total of 7 hours) may be cost-shared as appropriate monitoring and follow up of the beneficiary's progress. In addition, upon the submission of a claim for speech therapy in December 1981, 1 hour of therapy

during December 1981 can be cost-shared. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.


William Mayer, M.D.