



ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

HEALTH AFFAIRS

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

11 JUN 1984

Appeal of )  
Sponsor: ) OASD(HA) File No 84-08  
SSN: ) FINAL DECISION

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-08 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the CHAMPUS participating provider, National Jewish Hospital and Research Center/National Asthma Center, Denver, Colorado. The case involves the inpatient hospitalization of an 11-year-old stepson of an active duty member of the United States Air Force from October 15 through December 15, 1981, for treatment of asthma. The hospital has appealed the denial of CHAMPUS cost-sharing for the hospitalization from November 15 through December 15, 1981, involving an amount in dispute of approximately \$13,460.00.

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 CHAMPUS cost-share the hospital care provided October 20 through November 30, 1981, and deny cost-sharing for care provided December 1 through December 15, 1981. The Hearing Officer found the care subsequent to November 30, 1981, was not medically necessary nor appropriate medical care.

The Director, OCHAMPUS, concurs with the Hearing Officer's Recommended Decision and recommends adoption of the Recommended Decision by the Assistant Secretary of Defense (Health Affairs). After due consideration of the appeal record, the Assistant Secretary of Defense (Health Affairs) adopts the Hearing Officer's Recommended Decision. The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to authorize CHAMPUS cost-sharing of the inpatient care from October 20 through November 30, 1981, and to deny CHAMPUS cost-sharing of the care from December 1 through December 15, 1981. This decision is based on findings the care subsequent to November 30, 1981, was not medically necessary nor appropriate medical care.

FACTUAL BACKGROUND

The beneficiary suffered colds and eczema since his birth on December 2, 1970, and a diagnosis of asthma was made at the age of 16 months. At age 8, the beneficiary is reported to have "wheezed" almost every day with weekly physician office visits and frequent emergency room treatments. In 1979, the episodes of "wheezing" became less frequent but lasted 1 week or more. The beneficiary was hospitalized in 1975, 1979, 1980, and 1981 for short periods for evaluation and treatment. Precipitating factors for his asthma included exercise, dust, smoke, weather changes, and animal dander. Skin testing was performed and diet changes were made. The beneficiary suffered allergic rhinitis in summer and autumn and colds and nasal streptococcal infections in the winter. Corticosteroids have been used since 1977. Other medications included Prednisone, antihistamines, antibiotics, Vanceril, Alupent, and Theophylline.

The beneficiary had increased exacerbations of his asthma in the summer of 1981 and was evaluated by United States Air Force physicians in Alaska where his stepfather was assigned. The beneficiary was referred by the United States Air Force physicians to the National Jewish Hospital, Denver, Colorado, for a reassessment and evaluation of his medical regimen as these services were not available in Alaska.

The beneficiary was admitted to National Jewish Hospital and Research Center/National Asthma Center, Denver, Colorado, on October 20, 1981. The diagnosis upon admission was bronchial asthma with allergic rhinitis. During the hospitalization, the beneficiary received hematology, urinalysis, radiology, and pulmonary function testing. Hematology and urinalysis were normal; chest x-rays revealed hyperinflated lungs but otherwise normal. Pulmonary function testing revealed hyperinflated lungs with moderate airflow obstruction but significant improvement was noted with Alupent. Sweat test and eye examination were normal. Skin testing revealed markedly positive reactions to grass and weed pollens, mold, animal danders, and house dust. Asthma was documented by spirometry and exercise test. A low morning cortisol level indicated poor adrenal function. No clear signs of sinusitis were noted on nasal x-rays on two occasions, and no signs of chronic otitis media were observed. According to the discharge summary, the beneficiary did very well during his inpatient stay with only one acute exacerbation of asthma occurring during an upper respiratory infection. The beneficiary was discharged to home on December 15, 1981. Discharge diagnoses were chronic perennial asthma and perennial mild rhinitis. Medications at discharge were Theo-Dur, Vanceril, and Alupent.

Three CHAMPUS claims were submitted to the CHAMPUS Fiscal Intermediary for Colorado, Mutual of Omaha Insurance Company. Mutual of Omaha issued payments of \$6,880.50 on billed charges of \$25,937.50. From the available records, it appears care subsequent to October 31, 1981, was denied CHAMPUS cost-sharing

based on a finding that inpatient care was not required. The OCHAMPUS First Level Appeal Decision authorized cost-sharing for inpatient care October 20 through November 15, 1981, and denied cost-sharing of inpatient care subsequent to November 15, 1981, as not medically necessary. The National Jewish Hospital, as a CHAMPUS participating provider, appealed and requested a hearing but waived the right to appear. The appeal file was submitted to Sherman R. Bendalin, CHAMPUS Hearing Officer, for issuance of a Recommended Decision on the record. The Hearing Officer has issued his Recommended Decision and issuance of a FINAL DECISION is proper.

#### ISSUES AND FINDINGS OF FACT

The issue in this appeal is whether the inpatient care was medically necessary and appropriate medical care.

#### Medically Necessary/Appropriate Medical Care

Under the Department of Defense Regulation governing CHAMPUS, DoD 6010.8-R, chapter IV, A.1., CHAMPUS will cost-share medically necessary services. Medically necessary is defined as:

" . . . the level of service and supplies (that is, frequency, extent, and kinds) adequate for the diagnosis and treatment of illness of injury . . . medically necessary includes [the] concept of appropriate medical care." (Chapter II, B.104.)

Appropriate medical care means:

"a. That medical care where the medical services performed in the treatment of a disease or injury, or in connection with an obstetrical case or well-baby care, are in keeping with the generally acceptable norm for medical practice in the United States;

"b. The authorized individual professional provider rendering the medical care is qualified to perform such medical services by reason of his or her training and education and is licensed and/or certified by the state where the service is rendered or appropriate national organization or otherwise meets CHAMPUS standards; and

"c. The medical environment in which the medical services are performed is at the level adequate to provide the required medical care." (DoD 6010.8-R, chapter II., B. 14.)"

Therefore, to qualify for cost-sharing under CHAMPUS, the medical environment must be at the adequate level to provide required care. Care that is above the level of services required is not covered under CHAMPUS.

The Hearing Officer found inpatient care subsequent to November 30, 1981, was not medically necessary nor appropriate, and I agree. All parties agree that, due to the severity of the beneficiary's asthma, a period of inpatient care was required; however, my review of the appeal record reveals an unnecessarily extended hospitalization for evaluation and adjustment of medications. The records indicate the treatment plan (i.e. medication trials, asthma testing) was accomplished slowly.

During the period of November 15-30, 1981, the beneficiary had a spirometry test, medications were changed, a sleeping disturbance continued to be noted, and an upper respiratory infection occurred. The nurses' notes for November 29, 1981, state that the beneficiary knew the "wheezing" protocol and the medications, times, and dosages. This had been a problem earlier in the hospitalization and was noted to be then resolved. On November 28, 1981, the chest was noted as clear.

Reviewing the period of December 1-15, 1981, the record reveals the beneficiary was on passes December 3, 6, 8, and 13 continuing from numerous passes in late November. It is obvious the beneficiary was being tried on his medications outside the hospital. No problems were noted. Nurses' notes on December 3, 6, and 9 all indicate the chest was clear. Spirometry was very good according to the December 3 note. The shrimp challenge test was given on December 3, 1981 and no reaction was noted. This test appears, however, to have been delayed for several weeks. No reason is apparent from the record why this test could not have been given earlier. An exercise challenge with Alupent was performed on December 8, 1981, and no problems were noted. Again, this test could have been given earlier in the hospitalization. Several such tests were performed in November. In addition, the nurses' notes for many days throughout the hospitalization show little, if any, activity other than observation.

The medical records in this appeal were reviewed by two physicians, specialists in pediatrics and internal medicine, associated with the Colorado Foundation for Medical Care, a peer review organization. In the opinion of the reviewing physicians, the beneficiary required inpatient care as he was not well controlled as an outpatient and careful monitoring of the reduction in steroids was necessary. Hospitalization beyond November 30, 1981, however, was not required according to the medical reviewers. The physicians stated:

". . . the length of stay appeared to be prolonged. We do not think an 8-week hospital stay was medically necessary in this

case as the patient was not acutely ill and they [the hospital] should have been able to accomplish control in a shorter time."  
(Exhibit 15, p.2.)

The OCHAMPUS Medical Director, a psychiatrist, also reviewed the medical records and opined the record barely justified care beyond November 10, 1981, and recommended approval of the care only through November 15, 1981. The Hearing Officer chose to afford greater weight to the review by the pediatrician and internist, apparently due to their special expertise, than to the opinion of the OCHAMPUS Medical Director.

Several memoranda from the hospital staff and utilization review committee appear in the appeal file. Dr. Robert Strunk, Department of Pediatrics, justified the entire hospitalization based on the need for monitoring of steroid use and the difficulty in educating the beneficiary on how to take care of himself. Dr. Strunk also stated that although psychology, neurology, and neuropsychology consultations were obtained, these issues did not play a major role in evaluation or treatment. Curiously, the utilization review committee specifically mentioned these areas as constituting a major impairment to proper administration of care. Aside from this obvious conflict, the medical records support the resolution of the education difficulties in later November 1981. Therefore, this problem would not appear to constitute justification for hospitalization beyond November 30, 1981.

In summary, I find the record in this appeal minimally supports the medical necessity and appropriateness of the inpatient care through November 30, 1981. This 6-week period of hospitalization for evaluation and education of the beneficiary seems more than adequate considering the number of passes and many days when no testing or other activity was performed. Inpatient care beyond November 30, 1981, was not required for the treatment of the beneficiary.

#### SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to authorize CHAMPUS cost-sharing of the beneficiary's inpatient hospitalization at National Jewish Medical Center/National Asthma Center, Denver, Colorado, from October 20 through November 30, 1981, and to deny CHAMPUS cost-sharing of inpatient care from December 1 through December 15, 1981. The denial of CHAMPUS cost-sharing is based on findings the inpatient care subsequent to November 30, 1981, was not medically necessary nor appropriate medical care. The case is returned to the Director, OCHAMPUS, for appropriate claim processing and issuance of payment of the CHAMPUS cost-share of the inpatient care from November 15 through November 30, 1981. CHAMPUS cost-sharing of the claim for continued inpatient care

from December 1 through December 15, 1981, in the amount of \$6,485.00 is denied. 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.

14-08

RECOMMENDED DECISION  
Claim for CHAMPUS Benefits  
Civilian Health and Medical Program of the  
Uniformed Services  
(CHAMPUS)

<u>Beneficiary</u>	<u>051350-10041-01</u> Case Number
<u>Sponsor</u>	<u>Sponsor's SSN</u>

This case is before the undersigned Hearing Officer pursuant to the Appealing Party's Request for Hearing of the First Level Appeal determination. The Office of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) has granted the Appealing Party's Request for Hearing. Prior to the scheduling of the hearing, the Appealing Party, the National Jewish Hospital and Research Center, Denver, Colorado, 80206 waived the right to appear at a hearing, and agreed that the Hearing Officer could render his Recommended Decision based on the written record only. Accordingly, this Recommended Decision is being issued and forwarded pursuant to Regulation DoD 6010.8-R, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Chapter X, "Appeal and Hearing Procedures."

The amount at issue is \$13,950.00.

ISSUE

The issue before the Hearing Officer is as follows:

Whether the in-patient hospitalization and related services were medically necessary to treat the \_\_\_\_\_

beneficiary's asthma and psychosocial problems from October 20 through December 15, 1981?

LAW AND REGULATIONS

The CHAMPUS Regulation which governs this Hearing is DoD Regulation 6010.8-R, dated January 10, 1977. (Hereinafter "Regulation.") Generally, CHAMPUS basic program benefits are defined in Chapter IV(A)(1), and read as follows:

- "A. General. The CHAMPUS Basic Program is essentially a supplemental Program to the Uniformed Services direct medical care system. In many of its aspects, the Basic Program is similar to private medical insurance programs, and is designed to provide financial assistance to CHAMPUS beneficiaries for certain prescribed medical care obtained from civilian sources.
1. Scope of Benefits. 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, including maternity care. Benefits include specified medical services and supplies provided to eligible beneficiaries from authorized civilian sources such as hospitals, other authorized institutional providers, physicians and other authorized individual professional providers as well as professional ambulance service, prescription drugs, authorized medical supplies and rental of durable equipment."

In addition, the concept of Appropriate Medical Care is involved in this matter. Appropriate Medical Care is defined in Chapter II(B)(14) as follows:



"14. Appropriate Medical Care. "Appropriate Medical Care" means:

- a. That medical care where the medical services performed in the treatment of a disease or injury, or in connection with an obstetrical case, are in keeping with the generally acceptable norm for medical practice in the United States;
- b. The authorized individual professional provider rendering the medical care is qualified to perform such medical services by reason of his or her training and education and is licensed and/or certified by the state where the service is rendered or appropriate national organization or otherwise meets CHAMPUS standards; and
- c. The medical environment in which the medical services are performed is at the level adequate to provide the required medical care."

Medically necessary is defined in Chapter II(B)(104)

as follows:

"104. Medically Necessary. "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 care). Medically necessary includes concept of appropriate medical care."

Finally, Exclusions and Limitations are involved in the instant matter, which in part are defined in Chapter IV(G)(1) 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 from the CHAMPUS Basic Program:

1. Not Medically Necessary. Services and supplies which are not medically necessary for the diagnosis and/or treatment of a covered illness or injury. ...
2. 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."

#### EVIDENCE CONSIDERED

The Hearing Officer has carefully considered the exhibits originally forwarded in the Hearing File, Exhibits 1 through 20. In addition to the original 20 Exhibits, Exhibits 21 through 24 have been received by the Hearing Officer and made a part of this record. Exhibit 21 is a letter from Donald F. Wagner, Chief, Appeals and Hearings, OCHAMPUS, to Ms. Leslie Israeli, Inpatient Account Supervisor, National Jewish Hospital and Research Center, dated July 15, 1983 confirming that the matter would be assigned to a Hearing Officer for a hearing on the record, furnishing the name of the undersigned Hearing Officer to the Appealing Party, and enclosing a copy of the STATEMENT OF OCHAMPUS POSITION IN THE APPEAL OF

Exhibit 22 is a copy of the STATEMENT OF OCHAMPUS POSITION IN THE APPEAL OF \_\_\_\_\_, five pages long.

Exhibit 23 is a letter from Hearing Officer Bendalin to Ms. \_\_\_\_\_

Leslie Israeli, NJH, dated August 4, 1983 acknowledging assignment of the file for hearing, transmitting another copy of the STATEMENT OF OCHAMPUS POSITION, confirming the waiver of the hearing, and establishing a deadline for submission of additional evidence, if any. Exhibit 24 is a letter from Ms. Israeli, NJH, to Hearing Officer Bendalin, dated August 11, 1983, enclosing additional evidence, and confirming the waiver of the hearing and the submission of the matter on the record.

#### SUMMARY OF EVIDENCE

Three claims forms initiated the dispute herein. The first one was for medical care from December 1, 1981 through December 15, 1981, a total of 14 hospital days, regarding hospitalization at the National Jewish Hospital and Research Center. (Hereinafter "Appealing Party.") The first form, for the 14 days, totaled \$6,485.00 in claim benefits. The second claim form was for 30 days of hospitalization, from November 1, 1981 through November 30, 1981 in the amount of \$13,897.50. The third claim form is for 12 hospital days, from October 20, 1981 through October 31, 1981 in the amount of \$5,555.00. (Exhibit 1.)

A Nonavailability Statement was issued on behalf of  
with an expiration date of June 26, 1983.  
(Exhibit 3.)

An Admissions Summary is contained in the file, indicating admission with the Appealing Party on October 20, 1981. The admitting diagnosis was bronchial asthma with allergic rhinitis. (Exhibit 4.)

Forty-One pages of nurses' notes were contained in the file, regarding the hospitalization from October 20, 1981 through December 15, 1981. (Exhibit 5.)

October and November, 1981, monthly summaries were also included in the file. (Exhibit 6.)

Physicians orders are contained in the file, covering the period of hospitalization at the Appealing Party. (Exhibit 7.)

A discharge summary dated December 15, 1981 is in the file. The diagnosis, at time of discharge, was chronic perennial asthma and perennial mild rhinitis. (Exhibit 8.)

The Fiscal Intermediary, Mutual of Omaha, wrote the wife of the sponsor, \_\_\_\_\_, on March 4, 1982 explaining why \$13,950.00 of claimed charges had been denied. The Informal Review had concluded that the claim was correctly denied according to the information submitted with the claim. \_\_\_\_\_ was informed that according to the information given, the Fiscal Intermediary had decided that the services rendered by the Appealing Party could have been received on an out-patient basis rather than have the beneficiary, \_\_\_\_\_, hospitalized on an in-patient basis. \_\_\_\_\_ was informed about her appeal rights. (Exhibit 9.)

By letter dated March 11, 1982, the Fiscal Intermediary informed \_\_\_\_\_ that upon Reconsideration, it had been decided to uphold the denial of the claim. As before, the Fiscal Intermediary reasoned that the services rendered could have been received on an out-patient basis rather than as an in-patient at

the Appealing Party. (Exhibit 10.)

By letter dated March 18, 1982, requested  
First Level Appeal. (Exhibit 11.)

Filed by the Appealing Party on May 3, 1983, was documentation supporting the hospitalization treatment of the beneficiary. The report, authored by S. Allan Bock, M.D., indicated that by history, out-patient treatment of the beneficiary had not been "efficacious." Hospitalization was required to determine and prescribe a medication regime which would be adequate to control his asthma. Psychosocial and emotional problems had to be evaluated and their role in the beneficiary's treatment considered. In way of summary, it was noted that the beneficiary presented to the Appealing Party at time of admission moderately severe asthma with both pulmonary and adrenal compromise. He had significant psychosocial problems, and a sleep disturbance which appeared related to an emotional disturbance. During the hospitalization, the following was accomplished: the arrangement of a medical regime which did not include oral steroids; a significant improvement in the understanding of both psychosocial and emotional problems; the prescription of a plan in order to cope and deal with his psychosocial and emotional problems; and a significant improvement in both patient and family education which contributed to a better understanding and ability to cope with the beneficiary's illness. In addition to the above analysis, also submitted was an analysis authored by Steven J. Burst, LTC, USAF, which indicated that the beneficiary was a

long-term asthmatic who had numerous problems with his disease since an early age. Because of increased exacerbations, during the summer of 1981 it was decided to send him to the Appealing Party for a reassessment and evaluation of his medical regime, a service not available in Alaska. As a result of the re-evaluation and new treatment protocol instituted while a patient at the Appealing Party, [redacted], had done reasonably well. Lt. Col. Burst closed with an opinion that he hoped CHAMPUS benefits would help to defray the costs of this medical evaluation. (Exhibit 13.)

Exhibit 14 is a referral of the case to the Colorado Foundation for Medical Care for a professional review.

An OCHAMPUS Case Review Summary, dated September 21, 1982, performed by Robert E. Beck, M.D., an internist and Owen O'Mera, M.D. a pediatrician, was included in the file. (Exhibit 15.)

A memorandum authored by Alex R. Rodriguez, M.D., Medical Director, was included in the file. (Exhibit 16.)

By letter dated November 19, 1982, [redacted] was informed of the decision on the First Level Appeal and sent a copy of the decision. Based on this review, CHAMPUS cost-sharing was authorized from October 20, 1982 through November 15, 1981, but continued to be denied beyond November 15, 1981 as not being medically necessary. (Exhibit 17.)

Included in the file is a letter to the Appealing Party from Linda M. Bray, Attorney-Advisor, Office of Appeals and Hearings, OCHAMPUS, dated January 25, 1983 forwarding a copy

of the CHAMPUS First Level Appeal decision. (Exhibit 18.)

By letter dated April 22, 1983, Donald F. Wagner, Chief, Appeals and Hearings, OCHAMPUS, acknowledged to the Appealing Party that the appeal had been perfected, and that a hearing would be scheduled as soon as possible. (Exhibit 21.)

By letter dated July 15, 1983, Ms. Leslie Israeli, Inpatient Account Supervisor, Appealing Party, was notified that the matter had been sent to the undersigned Hearing Officer for a hearing on the record, and acknowledging waiver of the right to appear at the hearing. (Exhibit 21.)

The STATEMENT OF OCHAMPUS POSITION IN THE APPEAL OF  
was filed as Exhibit 22.

By letter dated August 4, 1983, the undersigned Hearing Officer confirmed with the Appealing Party its waiver of the right to appear at a hearing, and requesting that additional information be filed by a date certain, after which the matter would be deemed submitted. (Exhibit 23.)

By letter dated August 11, 1983, the Appealing Party filed additional documentation, copies of which have been sent to OCHAMPUS, and indicated they had nothing further to submit and that the matter was, as far as they were concerned, submitted for decision. (Exhibit 24.)

#### EVALUATION OF THE EVIDENCE

The undersigned Hearing Officer has carefully reviewed all the evidence in the file. The real issue is actually fairly simple. It is whether or not it was necessary for

to be hospitalized from October 20, 1981 through December 15, 1981 for care of his asthma in Denver, when he could not receive that kind of care where his stepfather and mother were stationed in Alaska. CHAMPUS has heretofore decided that it was medically necessary and therefore appropriate medical care for the hospitalization through November 15, 1981 but not afterwards.

The concept of medically necessary is defined in the CHAMPUS Regulations. The definition, it is respectfully submitted, leaves much to interpretation and to application by CHAMPUS, its respective Fiscal Intermediaries, and in claims where the appeal of a CHAMPUS or Fiscal Intermediary decision has been filed, to the respective Hearing Officers. The definition from the Regulation talks in terms of frequency, extent, and kinds of services and supplies adequate for the diagnosis and treatment of an illness or injury.

The Appealing Party has submitted admissions summaries, a discharge summary, and the evaluations of a Utilization Review Committee. There is also a pithy analysis from appears to be . . . treating military doctors. (Exhibit 13, p. 4) These documents, it appears to the undersigned, speak to the same point: at the time of admission at the Appealing Party, was just short of his eleventh birthday and had from the age of 16 months suffered from asthma. Some of those documents indicate that he was in hospitals many, many times, had been on various medications, none of which achieved the desired result, and had developed emotional and "psychosocial"



problems. The record, particularly the nurses' notes, contained indications of grinding of teeth and anti-social behavior as well as biting some of his peers when a fight arose over playtoys. (Exhibit 5, p. 31.) On the other hand, when [redacted] was discharged, it appeared that a good bit of his problems had been resolved during the in-patient stay. A memo generated by staff of the Appealing Party notes the following accomplishments during the entire hospitalization, which only could have been accomplished during an in-patient setting: working with [redacted] and his difficulty recognizing wheezing; recognizing the poor medication compliance and the evaluation of his night-time sleep problem; careful medical management allowing reduction of his use of steroids; and demonstrating that optimal medical compliance with good understanding allowed the reduction in the use of Prednisone. (Exhibit 24, p. 2.)

It is also instructive to closely examine the nurses' notes that are contained in the file to see exactly what the beneficiary was experiencing during the time he was hospitalized, particularly the dates in question, that is the hospitalization through November 30, 1981. Exhibit 5 contains photocopies of the nurses' notes from the entire hospitalization, October 20, 1981 through December 15, 1981. It is agreed that CHAMPUS has agreed to cost-share the hospitalization from October 20, 1981 through November 15, 1981. (Exhibit 17, p. 6.) Consequently, what was gained by [redacted] remaining an in-patient in the Appealing Party after November 16, 1981? On November 15, 1981 [redacted] underwent a spirometry test. (Exhibit 5, p. 32.) On that same date, a change

in his nocturnal behavior was noted and additional treatment was suggested. (Exhibit 5, p. 31.) On November 17, 1981, there was an indication of continuing documentation from the staff as being important in care. (Exhibit 5, p. 30.) On November 19, 1981, his medications were changed. (Exhibit 5, p. 28.) On November 24, 1981, his medications again were changed. (Exhibit 5, p. 25.) On November 24, 1981, there was an indication that close observation of was required due to his sore throat, the challenges he was undergoing, and due to his medications. (Exhibit 5, p. 24.) Also on November 24, 1981, he was observed to be in respiratory distress. (Exhibit 5, p. 24.) November 24, 1981 also contained an entry that was "out of touch with reality" and that it was very difficult to communicate with him. (Exhibit 5, p. 23.) On November 5, 1981, it was noted that he was congested and full of sputem, (Exhibit 5, p. 22.), and that in way of summary some goals were being achieved, and some were not being achieved, e.g., food allergies and his interaction with his peers. (Exhibit 5, p. 21.) On November 26, 1981, nocturnal problems were noted, and was still trying to deal with stress, anxiety and anger, (Exhibit 5, p. 20.), and that he was experiencing mild respiratory distress. (Exhibit 5, p. 19.) On November 27, 1981, there was noted the ongoing monitoring of sleep distress, (Exhibit 5, p. 19.), the need for a sputem culture, (Exhibit 5, p. 19.), and that the culture indeed showed a staph infection requiring observation for signs of infection or increasing respiratory distress. (Exhibit 5, p. 18.) On November 28, 1981, an examination was

required, x-rays were ordered and he was prescribed antibiotics, (Exhibit 5, p. 18.), and the worsening of his asthma was noted. (Exhibit 5, p. 17.) Finally, on November 30, 1981, there was a psychology note indicating that . was functioning marginally well; the necessity to check his sleep disturbances still existed; the setting and structure of hospital was stressed as providing "consistency and clear expectations for him"; and the work by the nursing staff was complimented as the doctor, authoring the psychology note, indicated it was his intention to continue to see . to provide the necessary support. (Exhibit 5, p. 15-16.)

The above sources in the file give support for the determination that through November 30, 1981, hospitalization was medically necessary. That same support comes from the Peer Review that was done at the request of the OCHAMPUS medical director. (Exhibit 15.) The two doctors comprising the Peer Review were an internist and a pediatrician. They indeed did write that they thought that eight weeks may have been prolonged and thus not medically necessary because the beneficiary was not acutely ill and control should have been accomplished earlier, but in the same report they wrote that in their opinion, hospitalization up through November 30, 1981 may have been required (perhaps appropriate). (Exhibit 15, p. 2.) Since medically necessary includes the concept of appropriate medical care, by definition from the Regulation, it is very difficult for the undersigned to decide that hospitalization through November 30, 1981, was not medically necessary when the doctors

performing the Peer Review indicate, based on the Peer Review, that such hospitalization, if not appropriate, was not inappropriate.

Nevertheless, it cannot be argued that the record contains support that the care rendered after November 30, 1981 was medically necessary; in fact, the two Exhibits in question, Nos. 5 and 15, seem to indicate that medically necessary care ended on November 30, 1981.

The OCHAMPUS Medical Director firmly opined that hospitalization should be paid only through November 15, 1981. (Exhibit 16.) It is respectfully submitted that the opinion from the Peer Review creates a conflict in the medical evidence with the Medical Director of OCHAMPUS, who himself is a psychiatrist. The undersigned chooses to believe, and therefore accords greater weight to the written testimony from the Peer Review physicians, one an internist and one a pediatrician and accords lesser weight to the OCHAMPUS Medical Director.

#### RATIONALE

After considering all the evidence, and all the exhibits in the file, the undersigned Hearing Officer is convinced that OCHAMPUS should cost-share the hospitalization through November 30, 1981. A medical conflict exists between the members of the Peer Review and the OCHAMPUS Medical Director and the Hearing Officer resolves that conflict in favor of the internist and pediatrician and against the psychiatrist Medical Director. The admission and discharge summary indicates a youngster who spent his eleventh birthday in the National Jewish

Hospital after suffering almost continuously with chronic rhinitis and asthma since the age of 16 months. The Appealing Party's Utilization Review Committee, as well as various internal memoranda, indicate that the medical care required by the beneficiary could not have been obtained as an out-patient as he had received prior medical care as an out-patient that was not helpful, and by the time he was admitted to the Appealing Party in October of 1981, he was on an inappropriate if not dangerous drug regime. Goals accomplished by the end of the hospitalization included a balancing of his medications, realization of what to do when the wheezing attacks occurred, psychosocial and psychological benefits. The undersigned disagrees with the OCHAMPUS Medical Director that medical care is barely justified beyond November 10, 1981. (Exhibit 16, p. 2.) Rather, based on the totality of the evidence, CHAMPUS cost-sharing should have been accomplished through November 30, 1981, but not beyond.

#### FINDINGS

The undersigned Hearing Officer makes the following specific findings of fact:

1. The beneficiary was admitted into National Jewish Hospital and Research Center on October 20, 1981 with a diagnosis of bronchial asthma with allergic rhinitis. A nonavailability statement had previously been issued.

2. On December 15, 1981, beneficiary was discharged with diagnosis of chronic perennial asthma with perennial mild rhinitis. Beneficiary had received treatment for chronic---

perennial asthma; symptoms from upper respiratory tract, ears and nose; and for a history of possible seizures and psychosocial problems.

3. OCHAMPUS partially reversed an earlier decision and authorized cost-sharing from October 20, 1981 through November 15, 1981 as medically necessary but denied subsequent cost-sharing as not medically necessary.

4. The National Jewish Hospital and Research Center, Appealing Party, documented with nursing progress notes, nursing summaries, physicians orders, a Utilization Review Committee report and internal memoranda that hospitalization was necessary up through discharge.

5. A Peer Review, requested by OCHAMPUS, opined that hospitalization was required beyond November 1, 1981, but not beyond November 30, 1981 while indicating that the entire eight week hospital stay was prolonged and therefore not medically necessary.

6. The OCHAMPUS Medical Director recommended cost-sharing through November 15, 1981 but not thereafter.

7. The preponderance of the medical evidence proves that the in-patient admission was required and therefore justified until November 30, 1981, but not beyond, and I so find.

8. The conflict in the medical testimony that exists as to the date of November 30, 1981, I resolve in favor of OCHAMPUS cost-sharing through November 30, 1981. The concept of medically necessary by the applicable Regulation includes the

concept of appropriate medical care; even the Peer Review confirms that in-patient care was required through November 30, 1981, while only suggesting that the entire eight week hospital stay was not medically necessary. By continuing to deny cost-sharing from December 1, 1981 through discharge on December 15, 1981 the Peer Review is being construed to give consistent application to the recommendations contained therein.

9. It is the finding of the undersigned Hearing Officer that OCHAMPUS cost-sharing benefits be authorized from November 1, 1981 through November 30, 1981 but not beyond as appropriate medical care and therefore medically necessary, pursuant to the applicable DoD Regulation, DoD 6010.8-R, which finding extends the cost-share already authorized by the First Level Appeal decision from November 16, 1981 through November 30, 1981.

10. All claims for cost-sharing after November 30, 1981 should continue to be rejected as not appropriate medical care and therefore not medically necessary, pursuant to the Regulation, DoD 6010.8-R.

#### RECOMMENDED DECISION

It is the recommendation of the undersigned Hearing Officer that the First Level Appeal Decision, rendered by OCHAMPUS on November 19, 1982 be modified to authorize CHAMPUS cost-sharing from October 20, 1981 through November 30, 1981 as medically necessary.

DATED this 26 day of March, 1984.

Sherman R. Bendalin  
Sherman R. Bendalin  
CHAMPUS Hearing Officer