HEALTH AFFAIRS

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

June 15, 1984

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) FILE 84-14
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-14 pursuant to 10 U.S.C. 1071-1092 and DoD 6010.8-R, chapter X. The appealing party is the CHAMPUS beneficiary who was represented by his father, an active duty Warrant Officer of the United States Army, and by his mother. The appeal involves the denial of inpatient psychiatric care in excess of 60 days received by the beneficiary during calendar year 1983. The amount in dispute cannot be determined as CHAMPUS claims for the period after the 60 days have not been filed; however, the amount in dispute is approximately $11,000.00.

The hearing file of record, the tape of oral testimony and the arguments presented at the hearing, the Hearing Officer's Recommended Decision, and the Analysis and Recommendation of the Director, OCHAMPUS, have been reviewed. It is the Hearing Officer's recommendation that inpatient psychiatric care beyond 60 days should not be cost-shared because the beneficiary did not meet the requirements for waiver of the 60-day calendar year limitation. The Hearing Officer found that the beneficiary was not suffering from an acute mental disorder which resulted in his being placed at a significant risk/danger to himself or others at or around the 60th day of hospitalization; that the beneficiary did not suffer any medical complications at or around the 60th day of hospitalization; and the beneficiary did not require the type, level, and intensity of services that could only be provided in an inpatient hospital setting after the 60th day of hospitalization. The Hearing Officer found the beneficiary could have been treated in a residential treatment center after the first 60 days of hospitalization.

The Director, OCHAMPUS, concurs in the Recommended Decision and recommends adoption of the Recommended Decision as the FINAL DECISION. The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, concurs in the recommendation of the Hearing Officer and hereby adopts and incorporates by reference the recommendation of the Hearing Officer as the FINAL DECISION.

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to deny CHAMPUS cost-sharing of the appealing party's inpatient psychiatric hospitalization and related services in excess of 60 days in calendar year 1983. This determination is based on findings that: (1) the beneficiary was not suffering from an acute mental disorder which resulted in the beneficiary being a significant danger to himself or others at or around the 60th day of inpatient care, and (2) the beneficiary did not require the type, level, and intensity of services that could be provided only in a hospital setting.

FACTUAL BACKGROUND

The beneficiary was 13 years old at the time of his admission to Charter Colonial Institute on April 19, 1983. His admission was precipitated by several events, in particular his aggression towards his mother whom he had dragged to the floor by her hair and beaten. The admitting diagnoses included conduct disorder, undersocialized aggression, and identity disorder.

The Hearing Officer's Recommended Decision described in detail the beneficiary's background, the events leading to the beneficiary's admission, and the course of treatment as described in the medical records. Because the Hearing Officer adequately discussed the factual record, it would be unduly repetitive to summarize the record, and it is accepted in full in this FINAL DECISION.

The beneficiary's therapist requested in a letter dated June 1, 1983, an additional 45 days inpatient coverage beyond the first 60 days of hospitalization. The OCHAMPUS Benefit Authorization Branch on July 18, 1983, denied the request. This denial was appealed and OCHAMPUS, in a Formal Review determination dated October 27, 1983, denied an extension of CHAMPUS cost-sharing beyond 60 days for inpatient psychiatric hospitalization. This denial was appealed and a hearing requested.

The Hearing Officer has provided a detailed summary of the factual background, including the appeals that were made and the previous denials, and the medical opinion of the OCHAMPUS Medical Director and reviewers from the American Psychiatric Association. Since the beneficiary was admitted to the psychiatric hospital on April 19, 1983, the 60-day limit was reached on June 17, 1983. The beneficiary was discharged on July 17, 1983.

The record does not contain any claims for the inpatient hospitalization from June 18 through July 17, 1983. However, the record reflects that daily charges at the institution were $348.00; therefore, approximately $10,440.00 would be the billed charges for the additional 30-day stay. The beneficiary's therapist in correspondence to OCHAMPUS indicated that the professional charges ranged from $210.00 to $280.00 per week depending on the frequency of sessions; therefore, approximately $1,000.00 would be in dispute for the related inpatient professional services.

The hearing was held on March 9, 1984, in Newport News, Virginia, before OCHAMPUS Hearing Officer Suzanne S. Wagner. Present at the hearing were the sponsor and his wife, the parents 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: (1) whether the beneficiary was suffering from an acute mental disorder which resulted in the beneficiary being a significant danger to self or others and the beneficiary required the type, level, and intensity of service that could be provided only in an inpatient hospital setting and (2) whether the care was provided at the appropriate level.

The Hearing Officer in her Recommended Decision correctly stated the issues and correctly referenced applicable law, regulations, and a prior Final Decision in this area. In particular, the Hearing Officer in her Recommended Decision cited the Department of Defense Appropriation Act of 1983 (Public Law 97-377, 96 Stat. 1830) which prohibited the expenditure of Department of Defense appropriated funds for inpatient psychiatric care in excess of 60 days for new admissions on or after January 1, 1983, except in specific circumstances. The Hearing Officer also cited and followed the precedential decision in this area, OASD(HA) Case File 83-54, which was issued by this office on March 1, 1984.

The Hearing Officer found that:

> "1. The beneficiary was not suffering from an acute mental disorder which resulted in his being placed at a significant risk/danger to himself or others at or around the 60th day of hospitalization.
>
> "2. The beneficiary did not suffer any medical complications at or around the 60th day of hospitalization.
>
> "3. The beneficiary did not require the type, level and intensity of service that could only be provided in an inpatient hospital setting, but could have been treated in an RTC after the first 60 days of hospitalization."

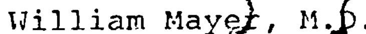
The Hearing Officer recommended that because inpatient care beyond 60 days is not authorized, all services, including inpatient individual therapy, related to the inpatient care in excess of 60 days should be excluded from CHAMPUS cost-sharing.

I concur in the Hearing Officer's findings and recommendations. I hereby adopt in full the Hearing Officer's Recommended

Decision, including the findings and recommendation, as the FINAL DECISION in this appeal.

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to affirm CHAMPUS cost-sharing of the beneficiary's first 60 days of inpatient psychiatric care during calendar year 1983 at Charter Colonial Institute and to deny a waiver of the Appropriation Act's 60-day limit for the beneficiary's extended hospitalization beyond 60 days. This decision is based upon (1) the finding the beneficiary was not suffering from an acute mental disorder which resulted in the beneficiary being a significant danger or risk to himself or others at or around the 60th day of hospitalization, and (2) the finding the beneficiary did not require the type, level, and intensity of services that could be provided only in an inpatient setting. Documentation in the appeal file did not establish the extraordinary circumstances exhibiting medical or psychological necessity for inpatient mental health care in excess of 60 days during calendar year 1983. It is also my determination that the beneficiary's inpatient mental health care beyond 60 days is above the appropriate level of care and excluded from CHAMPUS cost-sharing. This determination is based on a finding that the beneficiary could have been treated in a residential treatment center and did not require the type, level, and intensity of services that could be provided only in an inpatient hospital facility. As I have found inpatient care beyond 60 days is not authorized, I also find that all services, including inpatient individual psychotherapy, related to inpatient care in excess of 60 days are excluded from CHAMPUS cost-sharing. Therefore, the request for waiver of the 60-day inpatient limitation, the claims for inpatient care beyond 60 days in calendar year 1983, and the appeal of the beneficiary are all 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.

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

Appeal of:
Sponsor:
S.S.N.:
Provider,
Representatives:

This is the Recommended Decision of CHAMPUS Hearing Officer, Suzanne S. Wagner, in the CHAMPUS appeal case file and is authorized pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, Chapter X. The appealing parties are the parents of the beneficiary, as represented by them. The sponsor and father of the beneficiary is an active duty Chief Warrant Officer in the United States Army. The appeal involves the denial of CHAMPUS cost-sharing for an extension beyond 60 days of inpatient psychiatric care costing approximately $348.00 per day from June 18, 1983 through July 20, 1983, and the amount in dispute is approximately $10,000.00. An initial denial of the extension of inpatient psychiatric care beyond 60 days was made by the OCHAMPUS Benefit and Provider Authorization Branch and was upheld in a Formal Review Determination issued October 27, 1983.

The Hearing file of record has been reviewed. It is the OCHAMPUS Position that the Formal Review Determination, issued October 27, 1983, denying CHAMPUS cost-sharing for the extension beyond 60 days for inpatient psychiatric hospitalization be upheld on the basis that it was not shown that the patient was suffering from an acute mental disorder or an acute exacerbation of a chronic mental disorder which resulted in the patient's being placed at a significant risk to himself or a danger to others or that he required a type, level and intensity of care that could only be provided in an inpatient setting.

FACTUAL BACKGROUND

The beneficiary is a 15 year old male, and he is the son of an active duty Army Chief Warrant Officer 2. At the time of his admission to Charter Colonial Institute, on April 19, 1983, he was said to have presented a "clear danger to self and others." (Ex. 16, p.4) His aggressive behavior at home and at school had been escalating, and he had particularly focused his aggression towards his mother, whom he had dragged to the floor by her hair and beaten. (Ex. 16, p.4) On this occasion, he had threatened his mother with a baseball bat until he was subdued by a neighbor. He also showed an "intense interest in his mother's lingerie, dressing himself up in his mother's clothing." (Ex. 16, p.4)

He was medically diagnosed as suffering from multiple seizure disorders under control on Mysoline and Zarontin, mild mental retardation, and mild scoleosis. (Ex. 16, p.2) Psychiatrically, on admission, he was diagnosed: Axis I: Conduct Disorder, Undersocialized Aggressive (312 00) and Identity Disorder (313.82). (Ex.16, p5) On dischare, his psychiatric diagnoses were: "(Primary) Dysthymic Disorder (300.40), (Secondary) Identity Disorder (312.82) and (Tertiary) Conduct Disorder, Socialized, Aggressive (312.23)." (Ex. 16,p.5)

On admission to the hospital, which was voluntary, his parents cited their chief concerns as his aggression toward his mother, power struggling, non-compliance, dressing in his mother s clothing, entering his parents' locked bedroom with a screwdriver in order to get clothing items, and finding clothing items under his bed. (Ex.16,p.50)

The beneficiary was adopted at eight months, and little is known of his natural family. He began seizing at fifteen months and was hospitalized on several occasions culminating with four years of inpatient treatment at Langly Porter Hospital in San Francisco. (Ex. 16, p. 50) When his family moved to Fort Eustis, he entered a public school E.M R. class and was reportedly doing well. (Ex.16,p.50) His behavior deterioration became noticeable to his parents about six weeks prior to his admission to Charter Colonial Institute The behavioral deterioration coincided with the beneficiary s attaining physical/sexual maturity and beginning masturbation. (Ex.16,p.50) He would masturbate and then take several prolonged showers and baths. At this time, he became increasingly physically aggressive toward his mother and was increasingly involved in fighting in school. (Ex.16,p 50) At this time, he also began his intense interest with female clothes, and he would break into his parents' bedroom to obtain them He was also discovered dressed in his mother's undergarments. (Ex.16,p 50)

The working Treatment Plan for the beneficiary was to evaluate him for possible medication. He was also to be observed closely for staring spells, marked change of behavior, and lethargy after any outburst. Also, the length and frequency of his showers was to be monitored. (Ex.16,p.50)

His Psychiatric Assessment stated that his impulse control was very poor and cited his recent aggression towards his mother and his inability to handle sexual impulses. (Ex.16,p.54) There was also concern that he might not have been in touch with reality during the episodes of his donning his mother's clothes. (Ex.16,p.54)

The Diagnostic Assessment of the beneficiary gives a more detailed diagnosis of his status.

> "Axis I 300 40 Dysthymic Disorder. Patient meets the following criteria. Low energy level, feelings of inadequacy, low self-esteem, decreased productivity at home and school, signs of social withdrawal, extreme irritability and excessive anger towards mother, brooding about past Secondary diagnosis is 313 82 Identity Disorder Tertiary diagnosis 312.23 conduct Disorder, Socialized, Aggressive, Axis II. None, Axis III: Seizure Disorder, Axis IV: Code 3 Mild, father away from home, alleged alcoholism, other stresses are not known, and Axis V: Poor, patient aggressive toward mother, doing poorly in school and fighting with peers." (Ex.16,pp64-65)

The Therapy Progress notes begin with the week ending April 24, 1983, wherein it was stated that the patient was seen for 30 minutes on April 20, 1983, for the first time by his therapist. He was said to be cooperative and willing to attend. He talked about his anger towards his peers and his desire for revenge. A good initial rapport was established, and the "Justification for Continued Hospitalization" was that he presented a potential danger to himself and others. He was socially withdrawn, interacted minimally with peers, had staring spells, and presented as questionably in touch with reality at times. It was also noted that he had already begun testing limits. (Ex.16,p.72)

During the week ending May 1, 1983, the beneficiary was seen three times for individual therapy and once for family therapy. He was not issued any therapeutic passes, but he did have a family visit. The "Justification for Continued Hospitalization" stated:

> "The patient showing increased signs of manipulation, i.e., hopelessness, needs frequent redirection, obstinate, feeding into negative peer interaction, the patient still danger to self and to others by virtue of aggression, poor control over anger and hostility." (Ex.16,p.75)

During the week ending May 8, 1983, the beneficiary was seen three times for individual therapy and once for family therapy During this week, he was still demonstrating poor impulse control On May 5, 1983, he beat his fists on a school desk, on May 6, he was physically aggressive toward his roommate (hit the roommate), and he was secluded for eight hours for this behavior. He expressed to his therapist a desire to hit the latter. He was not issued any therapeutic passes, and he did have a visit with his parents. The "Justification for Continued Hospitalization" stated.

> "The patient's behavior indicates that he is a danger to self and others. He has poor control of aggression, increase in oppositional behavior .." (Ex.16,p.80)

During the week ending May 15, 1983, the beneficiary was seen for two individual sessions and once for family therapy. On May 14, the patient threatened to run away and was placed on runaway precautions His therapist stated, "The patient still has the potential for aggression and much suppressed anger and hostility." He also threatened his therapist and called the therapist abusive names in therapy It was again stated in the "Justification for Continued Hospitalization" that, "...shows behavior indicating that he is a danger to self and others... symptoms of depression remain." (Ex.16,p.83)

During the week ending May 22, 1983, the beneficiary was seen for three individual therapy sessions and once for family therapy. His threats against the therapist decreased, and it was noted that, "On the unit, the patient has shown some moments of improved social judgment in accepting responsibility for his activity and daily living skills " In the "Justification for Continued Hospitalizat it was noted

"The patient still shows poor control of angry, aggressive and hostile feelings, i.e., patient committed a self-abusive act, i.e., hitting hand on furniture..." (Ex.16,p.85)

During the week ending May 29, 1983, the beneficiary was seen for two individual therapy sessions and one family therapy session. He showed a minor aggressive act toward his therapist by grabbing the latter's leg. He was also aggressive toward his roommate by placing his hands around the latter's neck which required the intervention of a staff member It was noted that, "The patient shows. the ability to exercise social judgment by virtue of being able to request cool down when he's upset...", but that he still demonstrated poor control of anger and aggression. The "Justification for Continued Hospitalization" stated that:

"The patient has shown aggression toward his roommate, i.e., tried to harm him, hands around peer's neck. Poor control of anger and aggressive feelings. Increased noncompliance and oppositionality. (Ex.16,p.87)

During the week ending June 5, 1983, the beneficiary was seen for three individual therapy sessions and one family therapy session. It was noted that the patient began to display control over anger and that he was requesting cooldown rather than act out. The threats to his therapist decreased, but his mood, behavior and attitude fluctuated The "Justification for Continued Hospitalization" stated

"The patient still shows poor control of anger and hostile feelings... remains manipulative, willful, stubborn, and noncompliant and resistant to working on his therapeutic issues Due to this, the patient still remains a danger to himself and others, expecially mother." (Ex.16,p 89)

During the week ending June 12, 1983, the beneficiary was seen for three individual sessions and one family therapy session. It was stated that the beneficiary, "...displayed very poor impulse control and an increase in defiant and overt, aggressive and noncomplia behavior all week." On June 7, he was aggressive toward staff, on June 8, "...he was carried to cooldown banging furiously." He was secluded in cooldown again on June 8, and on June 9, he was again sent to cooldown after feces were found in his underware. He made an aggressive gesture toward his therapist, and he hit his fists against a window. The "Justification for Continued Hospitalization" stated:

"The patient has shown very poor control over angry and aggressive impulses... The patient still presents as a danger to himself and others and still requires an intensive and highly structured treatment setting." (Ex.16,p.91)

During the week ending June 19, 1983, the beneficiary was seen for individual therapy three times and once for family therapy. It was noted that the beneficiary fluctuated between good impulse control, compliance to staff direction, acceptance of chores and

responsibilities and refusal, limit testing, agitation of peers, and limits testing. It was noted that, "He pulled at therapist's tie, put shoes on therapist's pants, threw therapist's pen around cooldown room, threw the pen in the direction of therapist, attempting to have rickshaw off of wall to hit therapist and marking on wall." The patient also threw a cushion/pillow at the therapist. On June 17, he threatened "... to 'kill some staff' and shouted obscenit... It was noted that the patient could behave when he chose to. The "Justification for Continued Hospitalization" stated:

> "...still shows poor control of anger and aggressive impulses and feelings... is still a danger to self and others as indicated by aggressiveness and noncompliance with therapist..." (Ex.16,pp.94-95)

During the week ending June 26, 1983, the beneficiary was seen for four individual therapy sessions and one family therapy session. The Therapy Progress Notes stated:

> "An incident occured on 6/23/83 which still indicates that the patient is a danger to himself and others, i.e., the patient was noted to be pacing and staring in his room, banging and slamming bathroom door while on chair time, whistling, uncontrollable singing. . Male staff member offered patient boxing gloves to vent anger and the patient took an aggressive swing/punch at the male staff member. Several staff had to hold the patient on the floor until he was secluded During this time, the patient tried to bite staff... the patient was felt not to be psychotic, but in a full rage episode."

The "Justification for Continued Hospitalization" stated, "The patient still presents a danger to self and others by virtue of poor impulse control, poor social judgment, difficulty in controlling anger and frustration " (Ex.16,pp.97-98)

During the week ending July 3, 1983, the beneficiary was seen for three individual therapy sessions and one family therapy session. The patient, on June 28, fought staff as he was being carried to the cooldown room. He pulled on two staff members, pulled at the breast of a female staff member, and he scratched two staff members. However, during individual therapy, he was more cooperative. During medical rounds on June 27, the possibility of using an antidepressant medication was discussed, and on June 28, he was begun on Pamelor 25 Mg. times five nights. The medication was increased to 50 Mg. times four nights and increased to 75 Mg. The "Justification for Continued Hospitalization" stated:

> "The patient still presents a danger to himself and others as indicated by aggressive behavior and poor control over angry feelings. The patient is now on medication, will need time to be monitored for the effects of this. " (Ex.16,p.100)

During the week ending July 10, 1983, the beneficiary was seen once for individual therapy. He also was at home on a therapeutic pass during the week-end. The "Justification for Continued Hospitaliz stated:

"This youngster continues to exhibit great difficulties in terms of his overall impulse control relative to at this point, aggressive, impulses. He has great difficulties in handling any frustrating situations, and needs continued work in a well-structured, intensive environment in order to help him bring these particular behaviors under more appropriate control, which would then lead to his not posing a potential risk to himself or others." (Ex.16,p.103)

During the week ending July 17, 1983, the beneficiary was seen for one individual therapy session and for one family therapy session. He became aggressive towards the staff and was banging a door, cursing and demanding. He made a threatening gesture toward his therapist, i.e., he pulled his fist back as if to hit his therapist in the face. During this period, he also exhibited compliant and cooperative behavior. During an overnight pass to his home, his mother once again caught him seeking out female clothing at a friend's house. He was still on Pamelor, 75 Mg at this time. The "Justification for Continued Hospitalization" stated:

"The patient still shows poor control for angry and aggressive feelings or impulses... overtly aggressive to milieu staff and made serious aggressive movement toward therapist... still presents a danger to self and others, and still justifies a high level of intensive treatment until placement can be made at residential treatment center." (Ex.16,p.104)

During the week ending July 24, 1983, the beneficiary was seen twice for individual therapy and once for family therapy. The patient was noted to have displayed some progress in impulse control and to be able to express his feelings about leaving the hospital. He was taking his medication for seizures and Pamelor at 75 Mg. per day. In the "Justification for Continued Hospitalization" it is stated:

"The patient met his major goals for discharge, i.e., displayed significant impulse control to a point that he was not displaying aggressive behavior at the time of discharge, he had learned skills of self-expression so he need not act out as much, better able to accept authoritative direction without power struggling or manipulating behavior. The patient was discharged on 7/23/83." (Ex.16,pp.107-108)

In a letter to OCHAMPUS, from the patient's therapist, dated June 1, 1983, (Ex 5,pp.1-3) the therapist requested an additional 45 days of inpatient coverage beyond the first 60 days of hospitalization. The letter stated, in part:

"Admitting diagnosis was DSM III Axis I Conduct Disorder, undersocialized, aggressive 312.00, Identity Disorder 313.82, Rule out Dysthymic Disorder 300.40; Rule out Childhood Onset

Pervasive Development Disorder, residual state 299.91. Axis II Rule Out Borderline Personality Disorder, 300.4 (secondary) Identity Disorder 313 S2, and (tertiary) Conduct Disorder, socialized, aggressive 312.23. Axis II, none Axis III Seizure Disorder...

"Reason for this extension request is that the patient still demonstrates rather severe impulse control and recent aggressive behavior which indicates that he is still a danger to himself and others. On May 28, 1993, the patient became aggressive toward his roommate after verbal confrontation was observed by staff with his hands around his roommate's neck... an increased frequency of overt, non-compliant and oppositional behavior and attitude toward staff regarding unit rules, procedures, and... day to day responsibilities and expectations. On May 30, 1993, patient was observed banging his fists on his desk, was unable to handle a Chair Time or Room Cool Down by staff... when confronted... becomes angry, will threaten therapist, curse, threaten to leave therapy room, and recently aggressed/grabbed therapist's leg as if he wanted to hurt therapist. He did release his hands when directed ..(patient) threatened to run away... There is a high level of power struggling, manipulation, and attempts to split. Due to the patient's current level of denial, avoidance, passive aggressive behavior mixed with his current poor social judgment and impulse control, he still remains a danger to others... patient has aggressed toward a peer, made overatures of aggression towards his therapist.

"Patient has made therapeutic gains in his first forty-five days of inpatient care... capacity to engage in therapeutic relationship. . genuine sense of warmth and rapport in relationship developed by he [sic-him] and his therapist... he does have the capacity to follow limits... On the milieu patient has shown some capacity to problem solve, follow through on chores and responsibilities, express feelings appropriately in Community Meetings, and with his advocate... Encouraging progress is being made in family therapy...

"Treatment plan for the forty-five day requested extension includes continuation of a highly structured milieu program using behavioral contract level system, therapeutic passes as contingencies and motivators .. Treatment plan goals remain 1) patient will develop better impulse control and decrease passive aggressive acting out behavior toward mother,

2) patient will no longer use mother's belongings as a need for gratification; patient will learn improved social judgment. Discharge criteria are: 1) patient will not use mother's personal belongings and reasons patient has used same will be determined; 2) patient will demonstrate sufficient impulse control to the point that he is not displaying aggressive behavior towards mother; 3) patient will learn skills of self-expression so he need not act out aggressively; 4) patient will accept authoritative direction witout power struggling, provoking, or manipulation behavior; and 5) patient will demonstrate the ability to channel sexual impulses adaptively.

" It is hoped that the additional time will allow the treatment program to help patient work through this acute phase of his illness... The patient still needs structure in a high intense level of treatment and, therefore, cannot be treated on an outpatient basis..."

This case file was reviewed by American Psychiatric Association Peer Reviewers on June 16, 1983. It was their unanimous opinion that there was not sufficient documentation to establish that the patient's condition was of such severity, at or about the 60th day of hospitalization, as to require 24 hour surveillance and service which could not be rendered by partial hospitalization or on an outpatient basis. They were also unanimous in their opinion that the patient, at or about the 60th day of hospitalization, did not pose an imminent risk to himself or a danger to others. One peer reviewer noted that the patient had poor impulse control and was borderline mentally retarded. Again, all peer reviewers agreed that, at or about the 60th day of hospitalization, the patient did not suffer any medical complication which would require 24-hour acute inpatient hospital service. Finally, all peer reviewers agreed that an RTC would be a more appropriate level of care for the patient. (Ex.6,pp.1-9)

On the basis of this Peer Review, the OCHAMPUS Benefit and Provider Authorization Branch, on July 18, 1983, notified the Sponsor and Provider that benefits for an extension beyond 60 days of inpatient psychiatric hospitalization was denied.

On September 22, 1983, OCHAMPUS requested the Medical Director of OCHAMPUS, Dr. Alex R. Rodriguez, to review the file and render his opinion regarding the extension of benefits beyond 60 days of inpatient psychiatric hospitalization. (Ex 10) In his Medical Opinion, rendered September 26, 1983, Dr. Rodriguez stated:

"The peer reviewers and I agree that; 1. Certain conditions are not met in this case. The patient does present aggressive behavior which is considered a risk situation, but an acute inpatient psychiatric setting is not the level of care for which this behavior can be treated. A residential treatment center is considered by APA reviewers and by me to be adequate and preferred for long-term care such as is needed by this beneficiary Acute psychiatric inpatient care is not considered medically necessary or appropriate beyond 60 days ..

"3. There is an oversight in not prescribing or ruling out the need for medications in the treatment plan or progress notes. Therefore, it is reasonable to question the adequacy of the treatment plan and efficacy/medical necessity of treatment within this oversight.

"There is no justification for care beyond 60 days, and the patient should have been transferred to a residential treatment center." (Ex 19,p 1)

Based on the medical opinions of the APA peer reviews and the concurrence of the Medical Director of OCHAMPUS, a Formal Review Determination was sent to the Sponsor and Provider dated October 27, 1983, demying an extension of cost-sharing beyond 60 days for inpatient psychiatric hospitalization. (Ex 11,pp.3-7)

On November 3, 1983, the mother of the beneficiary requested a Hearing (Ex 12) On January 20, 1984, the mother of the beneficiary requested that the Hearing be conducted in March, 1984. (Ex.[illegible]

The entire medical record of the beneficiary was forwarded to OCHAMPUS on February 17, 1984 (Ex 16,pp.1-203) On February 28, 1984, the Provider forwarded another letter and supporting documents to support the position that an extension of cost sharing beyond 60 days of inpatient psychiatric hospitalization was warranted (Ex 17,pp.1-15) This material was received by OCHAMPUS on March 2, 1984. The letter, written by Wayne A. Martin, ASCW/LSW, the Primary Therapist, stated, in part:

"It was, and still remains, my firm position and conviction that inpatient care was medically necessary and that the patient was suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which placed him in significant danger to self and others and that he did require the type, level, and intensity of service only provided in an inpatient setting " (Ex.17,p.1)

Mr Martin referred to the Therapy Notes of June 16,wherein, he stated that there was evidence of, "...the patient's mood and attitude change .." The letter continued:

"There becomes increased limit testing, non-compliance, and soft aggression .. the patient displayed that he could not follow the rules of the Playroom (i.e., not be destructive of property, the patient hitting and punching bag against Playroom window. . increased amounts of limit testing, and non-compliance (i e., writing on wall, pulled at therapist's tie, put shoes on therapist's pants, threw therapist's pen)... During sessions of June 17, patient made verbal threats to kill some staff and shouted obscenities from the Cool Down Room If this isn't being a danger to self or others, I don't know what is. . With this highly manipulative patient, it was

imperative that [he] be convinced that his parents were serious and would follow through on this [placement in an RTC]... Again refer to Therapy Progress Note for week ending June 26 where it is noted that on June 23, the patient was observed pacing and staring in his room,slamming and banging bathroom door; while on Chair Time, whistling and singing uncontrollably; and when escorted by staff to Cool Down, was yelling, banging, and his behavior escalated. I don't know of any residential treatment center who would take patients at this point in treatment who showed this type of uncontrollable, aggressive, and non-compliant behavior. It is this behavior that indicates a need for intensity, security, and structure of an inpatient setting. In fact, immediate results were seen in Family Therapy of June 21 [Ex 16,p.99]... patient indicated an interest in decreasing the power struggle, and appeared more cooperative. It is at this juncture in the treatment that his original 60 days of inpatient care expired. The parents were already aware of the initial denial for 30 dyas extension It was felt clinically imperative that the patient complete minimally the program which would require an additional 30 days of inpatient care.

"Please refer to Therapy Progress Note for week ending July 3 [Ex.16,p 100] .. 'In Medical Rounds of June 27, the possibility of using antidepressant medication was discussed to help alleviate patient's mood swings, irritability, and attentional problems .. on June 28, 1983 the patient was started on Pamelor 25 mg. an antidepressant medication... It is felt that medication was not indicated until this juncture in treatment due to patient's sustained irritability, aggression, and mood swings... as to why the facility did not focus on the patient's mental retardation. In many ways the patient was fully capable of functioning in a [sic-at] least below average manner... the patient has a history of using his mental retardation in playing a very helpless, irresponsible, manipulative routine... He certainly demonstrated the ability to learn... an excellent memory of recall for certain facts and trivia of particular interest to him (i.e., baseball and football).

"The additional 30 days was needed in order to help stabilize the patient so he could be referred to a residential treatment center... Due to the lack of progress noted above, the patient was not in a condition to actually be transferred. In fact, patient was denied

admission to the residential treatment center of the Community Mental Health Center in Norfolk, Virginia (Ex.16,p.107)...

> "As no back up facility had been considered, the patient was discharged into custody of his father. . (the patient) has been able to be maintained on an outpatient basis since his discharge on July 20, 1983... though (the patient) has shown some regression... (the Patient) is still manageable, though at times minimally... I would hope that the Hearing Board would consider how much money has actually been saved by having this boy live at home and not having been placed in a residential treatment center. A big difference in allowing this outpatient success was the additional 30 days of outpatient [sic-inpatient] intensive treatment at Charter Colonial Institute."

Pursuant to the receipt of the material contained in Exhibit 17, a further medical opinion was requested from Dr Alex R. Rodriguez, and on March 5, 1984, the medical opinion was issued. (Ex 19) In this opinion, Dr Rodriguez, responding to the question as to whether the additional documentation (Ex.17) indicated whether the patient at or around the 60th day of hospitalization was suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which resulted in his being put at a significant risk to himself or becoming a danger to himself or others, stated

> "The initial and additional information does address the contention that this beneficiary did suffer from a chronic mental disorder which manifested itself in an acute exacerbation at the time of admission. Mr. Martin [the therapist] and the facility have not firmly established, however, that the periodic anger outbursts, threats, and limit testing manifested by the patient during the latter phase of his first 60 days in the facility did, in fact, constitute a separate 'acute exacerbation' of his disorder but were part of the subacute manifestations of this treatment episode. The behaviors were amenable to structured intervention(s) by the staff and did not reflect a <u>clear and present</u> danger to self or others,' although a <u>potential</u> risk might have been construed by the staff... It has been the position of the APApeer reviewers and me that the medical records do not indicate that this beneficiary's condition, on or about the 60th day, constituted a significant risk which required the acute psychiatric inpatient level of care .. The APA and OCHAMPUS positions are further developed on the view that the RTC level of care <u>is</u> an inpatient level of care, which was the appropriate level of care for the <u>long term</u> psychiatric treatment of this patient.' (Ex.19,pp.1-2)

In response to whether the documentation indicated whether the

patient required a type, level and intensity of services that could only be provided in an inpatient hospital setting, Dr. Rodriguez stated.

> "The initial and additional documentation assumes this facility, as an (acute) psychiatric inpatient treatment setting, would be the most appropriate level of care, since the assumed state of dangerousness could not be adequately contained or treated in a residential treatment center facility. Mr. Martin is unaware of any RTCs which would have accepted such a patient manifesting 'uncontrollable, aggressive, and non-compliant behavior'... The APA peer reviewers and I are well aware of several RTCs in the Eastern Virginia area -- within reasonable proximity of the patient's residence -- that routinely admit patients with similar signs and symptoms of emotional behavioral disorders such as the beneficiary manifested at the time of the period in question. Thus, the inpatient level of care provided by almost all CHAMPUS - authorized RTCs - accredited by JCAH under the same program criteria as acute inpatient psychiatric facilities - would be considered adequate to provide sufficient intensity and comprehensiveness of professional services to meet this beneficiary's treatment needs. It should be underscored that the delay (nine weeks after hospitalization) in administering a course of antidepressant medication may well have limited the efficacy of the inpatient treatments provided. This delay is appropriately questioned by the APA reviewers and me since the patient's mood swings, irritability, and attentional problems had been manifested for several years prior to his admission. Medication may well have been the key factor that finally resulted in his being able to function outside of the inpatient level of care, not the 'additional 30 days of outpatient [sic-inpatient] intensive treatment at the facility'." (Ex.19, pp 2-3)

The hearing was held March 9, 1984, before OCHAMPUS Hearing Officer, Suzanne S. Wagner, the sponsor and his wife (parents of the beneficiary), and Linda Rediger, the OCHAMPUS attorney-advisor.

ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are: (1) Whether the beneficiary was suffering from an acute mental disorder which resulted in the beneficiary being placed at a significant danger to self or others and the beneficiary required a type, level, and intensity of service that could be provided only in an inpatient hospital setting, and (2) whether the care was provided at the appropriate level.

Secondary issues that will be addressed include the issues of whether the patient suffered any medical complications at or around the 60th day of hospitalization, and whether the first 60 days of inpatient psychiatric care were medically necessary and at the appropriate level of care.

Inpatient Psychiatric Limitations

On December 21, 1982, the Department of defense Appropriation Act of 1983 (Public Law 97-377, 96 Stat. 1830) was enacted. Section 785 of Public Law 97-377 provided as follows:

> "Sec. 785. None of the funds appropriated by this Act shall be available to pay claims for inpatient mental health services provided under the Civilian Health and Medical Program of the Uniformed Services in excess of sixty days per patient per pear. Provided, that the foregoing limitation shall not apply to impatient mental health services (a) provided under the Program for the Handicapped, (b) provided as residential treatment care; (c) provided as partial hospital care. (d) provided to individual patients admitted prior to January 1, 1983 for so long as they remain continuously in inpatient status for medically or psychologically necessary reasons, or (e) provided pursuant to a waiver for medical or psychological necessities, granted in accordance with the findings of current peer review, as prescribed in guidelines established and promulgated by the Director, Office of Civilian Health and Medical Program of the Uniformed Services "

The clear language of this provision is to prohibit the expenditure of Department of Defense appropriated funds for inpatient psychiatric care in excess of 60 days for new admissions on or after January 1, 1983, except in four specific circumstances. Three of the specific circumstances for which an exception exists (i.e., care provided under the Program for the Hanidcapped, partial hospital care, and residential treatment center care) are not relevant to this appeal. The fourth specific circumstance established by subsection (e) of section 785 allows an extension of CHAMPUS cost-sharing for inpatient mental health services beyond 60 days for medical or psychological necessity determined in accordance with guidelines issued by the Director, OCHAMPUS.

In drafting the required guidelines, the language of Senate Report No. 97-580 concerning Public Law 97-377 was considered. The Committ on Appropriations noted that the Act's 60-day limit is the same as the Blue Cross/Blue Shield High Option Insurance Plan for federal employees after which CHAMPUS was originally patterned. In further comment, the Committee stated.

> "The Committee recommends bill language limiting the length of inpatient psychiatric care to 60 days annually, except when the Director

of CHAMPUS or a designee waives the limit due to extraordinary circumstances." (emphasis added) Senate Report 97-580, page 30.

Prior to enactment of Public Lae 97-377, CHAMPUS limited cost-sharing of inpatient mental health services only under concepts of medical necessity and appropriate level of care:

DoD6010.8-R, Chapter II.B.104. Medically Necessary "Medically Necessary" means the level of services and supplies (i.e., 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.

DoD 6010.8-R, Chapter II.B.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.

DoD 6010 8-R, Chapter IV.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 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 injuty

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

DoD 6010.8-R, Chapter IV.B.Institutional Benefits

1. General. Benefits may be extended for those covered services and supplies described in this Section B of this CHAPTER IV, provided by a hospital or other authorized institutional provider (as set forth in CHAPTERVI of this Regulation, "Authorized Providers"), when such services and supplies are ordered, directed and/or prescribe by a physician and provided in accordance with good medical practice and established standards of quality Such benefits are subject to any and all applicable definitions, conditions, limitations, exceptions and/or

exclusions as may be otherwise set forth in this or other CHAPTERS of this Regulation.

g. Inpatient: Appropriate Level Required. For purposes of inpatient care, the level of institutional care for which Basic Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment. If an appropriate lower level care facility would be adequate but is not available in the general locality, benefits may be continued in the higher level care facility but CHAMPUS institutional benefit payments shall be limited to the reasonable cost that would have been incurred in the appropriate lower level care facility, as determined by the Director, OCHAMPUS (or a designee). If it is determined that the institutional care can reasonable be provided in the home setting, no CHAMPUS institutional benefits are payable.

The intent of the funding limitation in Public Law 97-377 was clearly to impose additional restrictions on CHAMPUS coverage. Therefore, the CHAMPUS implementing guidelines were based on the Senate Report language of "extraordinary circumstances" for interpretati of the phrase "medical or psychological necessities" on which Public Law 97-377 conditioned the granting of a waiver of the 60-day coverage limitation. As a result, the Director, OCHAMPUS, issued the following interim guidelines on December 29, 1982, for waiver of the 60-day inpatient limitation

"a. The Director, OCHAMPUS, will grant coverage in excess of 60 days of inpatient mental health services in a calendar year, only if the Director finds that:

1. The patient is suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which results in the patient being a significant danger to self or others; and the patient requires a type, level, and intensity of service that can only be provided in an inpatient hospital setting; or

2. The patient has medical complications; and the patient requires a type, level, and intensity of service that can only be provided in an inpatient hospital setting." (See CHAMPUS Policy Manual, chapter 1, Section 11, page 11.1.1, December 29, 1982.)

As set forth in these guidelines the concepts of "extraordinary circumstances" and "medical or psychological necessities" have been interpreted and equated by the Director, OCHAMPUS, as requiring an acute mental disorder presenting a significant danger to the patient or others and, in addition, the condition must require the type, level, and intensity of service that can be provided only in an inpatient hospital setting.

In March 1983, OCHAMPUS revised the guidelines to the following

> "a. The Director, OCHAMPUS, taking into account the findings of professioanl review, will grant coverage in excess of 60 days of inpatient mental health services in a calendar year if the Director finds that.
>
> "1. The patient is suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which results in the patient being put at significant risk to self or becoming a danger to others; and the patient requires a type, level, and intensity of service that can only be provided in an inpatient setting; or
>
> "2. The patient has medical complications, and the patient requires a type, level, and intensity of service that can only be provided in an inpatient setting."

The revision from "the patient being a significant danger to self or others" to "the patient being put at significant risk to self or becoming a danger to others" is deemed to be minor wordsmithing which does not change the overall concept The two versions are considered essentially equal in their requirements.

In the present appeal, the Medical Director, OCHAMPUS, in both of his opinions (Exhibits 14 and 19), agreed that the first 60 days of inpatient psychiatric hospital care were medically necessary and at the appropriate level of care in accordance with DoD 6010.8-R, Chapter II B 14 , Chapter II B 104, Chapter IV G.1., and Chapter IV.G.3. Significant, however, is that the efficacy of the overall treatment for the beneficiary was questioned by the peer reviewers (Ex.6) and summarized by Dr Rodriguez (Ex. 14), wherein he stated that there was an "oversight in not prescribing or ruling out the need for medication .. it is reasonable to question the adequacy of the treatment plan ..". The reasons as to why antidepressant medication was not tried until nine weeks after the patient was hospitalizaed, is not properly addressed in the record. On the Admission Note (Ex.16.p 50) the Working treatment Plan begins with "Evaluate for possible medication." The only explanation offered by the Provider as to the delay in a trial of medication is found in Exhibit 17 page 2 wherein the Provider stated:

> "Philosophically, our facility believes in medication at minimal levels and only where strongly indicated. It is felt that medication was not indicated until this juncture in treatment due to patient's sustained irritability, aggression, and mood swings."

During the Hearing, the mother of the beneficiary testified that antidepressant medication was not tried because there was concern as to possible adverse effects due to the fact that the patient also takes seizure medication However, it seems unlikely that the risks attendant to a trial of antidepressant medication would have deterred such treatment inasmuch as the patient could be

very closely monitored in the intensive inpatient setting. Neither the weekly Therapy Notes nor the Daily Unit Notes make any reference to any "evaluation for possible medication" until June 27, wherein the possibility of medication was first addressed. Within two weeks of the administration of medication, the patient's mother, as stated in her testimony, recognized significant behavioral and attitudinal improvement in her son.

The APA peer reviewers and the Medical Director, OCHAMPUS, concur that inpatient psychiatric hospitalization beyond the 60th day was not warranted as the beneficiary was not suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which resulted in his being put at a significant risk/danger to himself or others at or around the 60th day of hospitalization.

The record does not support the contention of the Provider and Sponsor that the beneficiary posed a significant danger/risk to himself or others at or about the 60th day of hospitalization. The parents of the beneficiary testified that they believed that the beneficiary was still presenting a substantial risk, especially to the mother, at or about the 60th day of hospitalization. The mother testified that, as the main object of her son's past aggression, she was best in a position to judge his aggressive status at the period of time in question. She stated that she could sense, even by his "look" that he was still a danger to her at or around the 60th day of hospitalization. She testified that it was about two weeks prior to her son's discharge that she noted a significant improvement in the latter's behavior and attitude.

The patient's primary therapist, in his letter supporting an extension of benefits beyond 60 days, dated February 28, 1984, used the following examples of the beneficiary's behavior to support his theory that the latter was a risk/danger to self and others at or about the 60th day:

1. "When the therapist confronted the patient's avoidance and attempts to focus on issues.. the patient's mood and attitude chage. There becomes increased limit testing, non-compliance and soft aggression."

2. "...the patient displayed that he could not follow the rules of the playroom (i.e., not be destructive of property, the patient hitting punching bag against Playroom window."

3 "In Cool Down Room during therapy patient showed poor management of behavior, increased amount of limit testing, and non-compliance (i.e., writing on wall, pulled at therapist's tie, put shoes on therapist's pants, threw therapist's pen)."

4. "...patient made verbal threats to kill some staff and shouted obscenities from the Cool Down Room. If this isn't being a danger to self or others, I don't know what is."

5. "...slamming and banging bathroom door ..

whistling and singing uncontrollably .. yelling, banging, and his behavior escalated "
(Ex 17,pp.1&2)

The APA peer reviewers (Ex. 6 pp.4&7) noted that there was not sufficient documentation to support that the patient was a significant risk/danger to himself and others to warrant a waiver of the 60 day limitation on inpatient psychiatric hospitalization. The Medical Director, OCHAMPUS, in addressing this issue, stated that, "The patient does present aggressive behavior which is considered a risk situation, but an acute inpatient psychiatric setting is not the level of care for which this behavior can be treated." (Ex. 14, p.1) In his subsequent medical opinion, Dr. Rodriguez stated:

> "The behaviors were amenable to structured intervention(s) by the staff, and did not reflect a clear and present 'danger to self or others', although a potential risk might have been construed by the staff. Whether a verbal threat to kill others, in the context of his previous aggressive gestures and threats, would constitute a significant risk must be left to professional judgment. It has been the position of the APA peer reviewers and me that the medical records do not indicate that this beneficiary's condition, on or about the 60th day, constituted a significant risk which required the acute psychiatric inpatient level of care." (Ex 19, p.1)

OASD (HA), File 83-54 is a precedential Final Decision addressing the degree of risk required to meet the significant risk/danger guidelines for granting a waiver of the 60 day limit In that case, the Hearing Officer adopted a standard of suicidal or homicidal behavior of a floridly psychotic beneficiary. The decision states that a significant risk/danger could also be posed by less than suicidal or homicidal behavior The opinion, on page 9, states:

> "A more general standard, applied on a case by case review, would be a current risk of serious harm to self or others that requires inpatient hospital care. It is, of course, incumbant upon the appealing party to demonstrate the patient represented such a risk that could not be treated in other than an acute level."

In the present case, the Peer Reviewers and the OCHAMPUS Medical Director concurred that the potential risks presented by the beneficiary could have been adequately addressed in partial hospitalization or Residential Treatment Center care. The Medical Director,OCHAMPUS, concluded that periodic anger outbursts, threats, limit testing and a verbal threat to kill did not constitute a significant present risk/danger to self or others, and neither the record nor the testimony supported the contention of the Provider and Sponsor that on or about the 60th day, the beneficiary was placed at significant risk/danger to self or others which could not be treated in other than an acute leve There is no evidence of any real suicidal or homicidal threat on or around the 60th day of care. The treating therapist uses examples of limit testing, non-compliance, what he terms "solf aggression", and verbal threats to support his theory of risk/danger to self or others at or about the 60th day of care. These behaviors are not considered by the peer reviewers

to constitute a risk/danger situation .

The Hearing Officer finds that the record and the testimony in this appeal do not document that the beneficiary was a significant danger or risk to himself or others at or around the 60th day of inpatient care and, at that time did not require the type, level and intensity of an inpatient setting. Therefore, the record does not document that the criteria for waiver of the 60 day inpatient psychiatric limitation have been met and CHAMPUS coverage of the beneficiary's inpatient care beyond 60 days in calendar year 1983 should not be authorized.

APPROPRIATE LEVEL OF CARE

Under the Department of Defense Regulation 6010.8-R, Chapter IV, B.1.g. (quoted on pages 14 and 15 hereof), CHAMPUS benefits may be extended for institutional care only at the appropriate level required to provide the medically necessary treatment.

Medically necessary is defined in DoD 6010.8-R, Chapter II,B.104 (quoted on pate 14 hereof).

In the context of inpatient mental health care, the CHAMPUS guidelines for granting a waiver of the 60 day per calendar year limitation based on "medical or psychological necessities" require a finding that the patient has an acute mental disorder or medical complication and that:

> "...the patient requires a type, level, and intensity of service that can only be provided in an inpatient setting."

It was tbe opinion of the peer reviewers that the beneficiary did not require inpatient hospital care but did require only residential treatment center care or partial hospitalization. (Ex.6 pp.5&8)

Dr. Rodriguez, in his medical opinion of September 26, 1983, stated.

> "A residential treatment center is considered by APA reviewers and by me to be adequate and preferred for long-term care such as that needed by this beneficiary. Acute psychiatric inpatient care is not considered medically necessary or appropriate beyond 60 days." (Ex. 14, p.1)

In his letter to OCHAMPUS dated February 28, 1984, Mr. Martin, the Primary Therapist stated:

> "I don't know of any residential treatment centers who would take patients at this point in treatment who showed this type of uncontrollable, aggressive and non-compliant behavior. It is this behavior that indicates a need for intensity security and structure of an inpatient setting.. "
>
> "The additional 30 days was needed in order to help stabilize the patient so he could be referred to a residential treatment center. Due to the lack of progress... the patient was not in a condition to actually be transferred. In fact, patient was denied admission to the residential treatment cernter of the Community Health Center in Norfolk, Virginia."

In her testimony, the mother of the benefkciary stated that she also into an RTC in Portsmouth, Virginia. She stated that she was notified a few days after her son was discharged to home that the latter could enter the RTC in Portsmouth, but she decided that it would be more beneficial to her son to allow him to try to manage at home.

In his March 5, 1984, Medical Opinion, Dr. Rodriguez commented.

> The initial and additional documentation assumes this facility, as an (acute) psychiatric inpatient treatment setting, would be the most appropriate level of care, since the assumed state of dangerousness could not be adequately contained or treated in a residential treatment center facility. Mr. Martin is unaware of any RTCs which would have accepted such a patient manifesting "uncontrollable, aggressive, and non-compliant behavior." Thus, no 'back-up facility has been considered.' This was an unfortunate decision based on an erronious assumption. The APA peer reviewers and I are well aware of several RTCs in the Eastern Virginia area -within reasonable proximity of the family's residence - that routinely admit patients with similar signs and symptoms of emotional-behavioral disorders such as this beneficiary manifested at the time of the period in question. Thus, the inpatient level of care provided by almost all CHAMPUS -authorized RTCs - accredited by JCAH under the same program criteria as acute inpatient psychiatric facilities - would be considered adequate to provide sufficient intensity and comprehensiveness of professional services to meet this beneficiary's treatment needs It should be underscored that the delay (nine weeks after hospitalization) in administering a couse of antidepressant medication may well have limited the efficacy of the inpatient treatments provided. This delay is appropriately questioned by the APAreviewers and me since the patient's 'mood swings, irritability, and attentional problems' had been manifested for several years prior to his admission. Medication may well have been the key factor that finally resulted in his being able to function outside of the inpatient level of care, not the 'additional 30 days of outpatient (sic-inpatient) intensive treatment' at the facility "

The Hearing Officer finds that inpatient hospital care received by the beneficiary after the 60th day of care during calendar year 1983 was above the appropriate level of care. The beneficiary, after the 60th day of care, didnot require the type, level, and intensity of services that could only be provided in an inpatient setting. Almost all CHAMPUS-authorized RTCs would have been adequate to provide sufficient intensity and comprehensiveness of professional services to meet the beneficiary's treatment needs(see quote from Dr. Rodriguez, above). There were several RTCs in reasonable

proximity to the family's residence which routinely admitted patients with similar symptoms of emotional-behavioral disorders such as were manifested by the beneficiary during the time in question.

Due to the finding that the beneficiary's inpatient hospitalization beyond 60 days in calendar year 1983 exceeded the CHAMPUS limitation and cost-sharing for care beyond the 60th day is not authorized, all services and supplies related to the noncovered treatment are excluded from CHAMPUS coverage.

CHAMPUS regulation DoD6010.8-R, Chapter IV,G.3., specifically excluded "services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care."

SECONDARY ISSUES

1 WHETHER THE PATIENT SUFFERED ANY MEDICAL COMPLICATIONS AT OR AROUND THE 60th DAY OF HOSPITALIZATION?

The peer review psychiatrists and the Medical Director, OCHAMPUS, found that there were no medical complications which would have required that the beneficiary remain an inpatient beyond the initial 60 days of care The medical record and the testimony are also devoid of any evidence to support extended inpatient care beyond 60 days due to medical complications.

The Hearing Officer finds that there are no medical complications at or around the 60th day of hospitalization which would require extended care beyond 60 days

2.WHETHER THE FIRST 60 DAYS OF INPATIENT PSYCHIATRIC CARE WERE MEDICALLY NECESSARY AND AT THE APPROPRIATE LEVEL OF CARE?

Medically necessary services and supplies required in the diagnosis or treatment of disease, injury or illness may be cost-shared under the CHAMPUS Basic Program subject to all applicable exclusions and limitation, pursuant to DoD6010.8-R, Chapter IV, A.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 professioanl ambulance service, prescription drugs, authorized medical and rental of durable equipment."

MedicalNecessity and Appropriate Medical Care are defined in DoD 6010.8-R, Chapter II.B.104 and B.14 respectively (as quoted on page 14 hereof) Appropriate medical care is included in the concept of medical necessity and is defined in DoD6010.8-R, Chapter II,B.14.c (as quoted on page 14 hereof), as the medical environment in which the medical services performed are at the level adequate to provide the required medical care. Treatment that is not medically necessary is excluded from the CHAMPUS Basic Program pursuant

to DoD 6010 8-R, Chapter IV.G.1. and G.3. (as quoted on pages 14 and 15 hereof)

Dr. Rodriguez, in his medical opinions (Exhibits 14 and 19), while not stating affirmatively that the first 60 days of care were medically necessary and at the appropriate level of care, did state that:

> "Acute psychiatric inpatient care is not considered medically necessary or appropriate beyond 60 days." (Emphasis added) (Ex.14,p.1)

The Hearing Officer finds no evidence in the record or in the testimony to indicate that the first 60 days of inpatient psychiatric hospitalization was not medically necessary or above the appropriate level of care. Therefore, cost-sharing for the first 60 days of inpatient psychiatric hospitalization was properly authorized

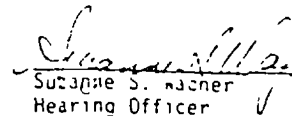
SUMMARY

In summary, it is the Recommended Decision of the Hearing Officer that the first 60 days of inpatient hospitalization in calendar year 1983 were medically necessary and provided at the appropriate institutional level of care. Further, the Hearing Officer recommends that inpatient psychiatric care beyond 60 days should not be cost-shared because the beneficiary did not meet the requirements for waiver of the 60 day calendar year limitation. The recommendation is based on the findings that

> 1 The beneficiary was not suffering from an acute mental disorder which resulted in his being placed at a significant risk/danger to himself or others at or around the 60th day of hospitalization.
>
> 2. The beneficiary did not suffer any medical complications at or around the 60th day of hospitalization.
>
> 3 The beneficiary did not require the type, level and intensity of services that could only be provided in an inpatient hospital setting, but could have been treated in an RTC after the first 60 days of hospitalization.

Also, it is recommended that because inpatient care beyond 60 days is not authorized, that all services, including inpatient individual therapy, related to inpatient care in excess of 60 days should be excluded from cost-sharing.

The Hearing Officer Recommends that the Formal Review Decision to deny the waiver of the 60 day inpatient limitation, dated October 27, 1983, be upheld



Suzanne S. Wagner
Hearing Officer

Dated. March 14, 1984