



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

HEALTH AFFAIRS

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

Appeal of )
)
)
Sponsor: ) OASD(HA) File 84-23
) FINAL DECISION
SSN: )

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-23 pursuant to 10 U.S.C. 1071-1092 and DoD 6010.8-R, chapter X. The appealing party is the estate of the beneficiary, as represented by the sponsor, a retired member of the United States Air Force. The appeal involves the denial of CHAMPUS cost-sharing for alcohol rehabilitation services and supplies provided December 19 through December 25, 1981. The amount in dispute is approximately \$1,214.82.

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-sharing of the alcohol rehabilitation services and supplies provided from December 19 through December 25, 1981, be denied. The Hearing Officer found the alcohol detoxification rehabilitation program in excess of 21 days was not medically necessary and was provided above the appropriate level of care.

The Director, OCHAMPUS, concurs with the Hearing Officer's Recommended Decision and recommends its adoption by the Assistant Secretary of Defense (Health Affairs) as the FINAL DECISION.

The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, adopts and incorporates by reference the Hearing Officer's Recommended Decision denying cost-sharing of the alcohol rehabilitation services and supplies provided December 19 through December 25, 1981, based on findings the care was not medically necessary and provided above the appropriate level of care.

In my review, I find the Recommended Decision adequately states and analyzes the issue, applicable authorities, and evidence of record, including authoritative medical opinion, in this appeal. The findings are fully supported by the Recommended Decision and the appeal record. Additional factual and

regulation analysis of the issue is not required. The Recommended Decision is acceptable for adoption as the FINAL DECISION by this office.

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to deny CHAMPUS cost-sharing of the alcohol rehabilitation services and supplies provided from December 19 through December 25, 1981, as the care was not medically necessary and was provided above the appropriate level of care. The appeal of the estate of the deceased beneficiary is, therefore, denied. Issuance of this FINAL DECISION completes the administrative appeal process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.

*William Mayer*  
William Mayer, M.D.

RECOMMENDED HEARING DECISION

Claim for Benefits under the  
Civilian Health & Medical  
Program of the Uniformed Services  
(CHAMPUS)

Beneficiary:

Sponsor :

SSN :

This is the recommended decision of CHAMPUS Hearing Officer in the CHAMPUS appeal of and is authorized pursuant to 10 U.S.C. 1079-1089 and DoD 6010,8-K, Chapter X. The appealing party is the estate of the deceased beneficiary, as represented by her husband, a retired sergeant of the U.S. Air Force. The appeal involves the denial of CHAMPUS cost-sharing for alcohol rehabilitation care from December 19 through December 25, 1981. The amount in dispute is approximately \$1,214.82.

The hearing file of record has been reviewed along with the testimony given by at the hearing and the exhibit offered by him (Number 32). It is the OCHAMPUS position that the Formal Review determination, issued December 16, 1983, be upheld on the basis that the care provided to the beneficiary after three weeks of combined alcohol detoxification and rehabilitation was above the appropriate level of care and not medically necessary under the CHAMPUS Law and Regulation.

The Hearing Officer, after due consideration of the appeal record concurs in the recommendation of OCHAMPUS to deny CHAMPUS cost-sharing. The Recommended Decision of the Hearing Officer is, therefore, to deny cost-sharing for the care provided to the beneficiary at Penrose Hospital from December 19 through December 25, 1981.

FACTUAL BACKGROUND

The beneficiary was 41 years old at the time the care in dispute was rendered. This patient was taken to the Air Force Academy Hospital on November 27th because she was very ill and hallucinating. While there she experienced what her husband described at the hearing as convulsions and the personnel at the Academy Hospital said they could not treat her there. They recommended she be taken to the alcoholism unit at Penrose Hospital in Colorado Springs and she was transported there that same day by ambulance. She was voluntarily admitted with the primary diagnosis of alcoholism and a secondary diagnosis of possible seizure disorder and transient hypokalemia. The admission history and physical states the patient had been drinking heavily for the past seven years up to a half quart of bourbon a day. She denied any medical or work problems associated with her drinking, but described some family problems. On this

report Dr. stated "The patient was seen at the mental health clinic at the Air Force Academy today and there was some question of a seizure at that time. That has not been well documented. The patient does not think she had a seizure." She is described as "a well developed, pleasant, well-oriented white female adult in no acute distress." The patient care flow sheet, Exhibit 6, shows that during the four weeks of hospitalization she was seen by Dr. eight times. At first her mood is described as anxious and then changes rather consistently to cheerful and alert. She was out on pass on December 5, 7, 12, 13 and 19. The progress notes show she had no seizures while she was in the hospital (Exhibit 7) and this was confirmed by her husband at the hearing. The notes written by her counselor, (Exhibit 8), shows some holding back emotionally especially in dealing with loss, but they are uneventful and show the counselor to be pleased with her progress, including the interaction with her family.

The first few days of her hospitalization she was given thiamin stress tabs, K-tabs, and on the first day she was given dilantin once which was also administered in the evening for the next four days. Other than this dilantin the record shows that after the initial two-day period only thiamin and stress tabs were administered. The summary of progress written by Virginia Mayfield, the primary counselor, shows that the patient made good progress, got along well with the other residents, worked hard with her family, and in the closing remarks stated: "Has made a very good start toward a quality sobriety. Will need to follow through on after care plan. Prognosis guarded."

Dr. discharge summary stated for hospital course: "The patient had a question of seizure disorder on admission because of some questionable seizure activity that had occurred at the Air Force Academy. Patient did not have any recurrence of any seizure type activity or anything questionably related to that. The patient was initially treated on dilantin. It was suggested to her that she have an electroencephalogram completed after discharge. CAT scan was initially low but came back to normal nicely. The patient did have elevated SGOT, LDH and uric acid. These came back nearly to normal at the time of discharge. Patient had no unusual medical difficulties while in the hospital and did well on the program." (Exhibit 16)

After the CHAMPUS denial of the last week of care, Dr. wrote stating that he felt it was important for her to remain in the hospital a total of four weeks: "... had medical problems in the hospital which complicated her alcoholism treatment. She did have a hypokalemia and also had a questionable seizure disorder manifested during hospitalization." (Exhibit 18) The primary therapist wrote a letter which the sponsor brought to the hearing. In it she stated: "Normally if the patient has only 21 days insurance coverage the patient is discharged from the hospital after 21 days and completes the program as an outpatient. In the case of this patient Dr. Medical Director of and Mrs. physician felt that she had medical problems which would prevent her from safely going to an outpatient status for her last week of treatment. She was therefore kept in the hospital as an inpatient until she completed the program. Please refer to Dr. letter for details on the medical problems."

At the hearing the sponsor testified that the alcoholism treatment program at the Riegal Center was 28 days for the usual program. He said that nobody ever told him that CHAMPUS would only pay for 21 days and that if he had known his wife could have left at the end of 21 days, she would have. After she was discharged he heard nothing until Penrose Hospital started billing him for the last seven days of care. He then wrote to CHAMPUS, and for one year did not even receive a reply. After that period of time had gone by he contacted Senator \_\_\_\_\_ regarding this claim and then he received a reply. During this period of time the hospital threatened they would turn the account over to a collection agency and bring suit and to protect his credit he paid all of the charges. He testified that his wife died on August 14, 1982 and an autopsy was performed. The death certificate listed the cause of death as liver failure due to chronic alcoholism. She was given antabuse when she left the hospital but that was the only medication she was receiving. She did go into an outpatient treatment program with AA and the family went to Alanon and Alateen. She went back to the hospital for group therapy, which sometimes included her spouse.

Before making the formal review decision a case conference was held with the OCHAMPUS Assistant Medical Director. He found that the first 21 days of the patient's hospitalization were necessary and appropriate for care for her alcoholism. He found that any medical problems she had were addressed in the first 21 days and he stated as follows: "The medical records did indicate some hepatic insufficiency indicated by elevated liver enzymes but this was not substantiated by the doctor or intradisciplinary notes and would not indicate retention in the hospital beyond 21 days. According to the medical records the patient could have been safely terminated after 21 days. There was no evidence in the chart of the patient's medical condition during the last six days. There was insufficient medical documentation of medical necessity beyond December 18, 1983." (Exhibit 25)

It appears from the record that for the first three days she was in a detoxification treatment because the statement from the hospital shows an extra care charge of \$110.00 for November 27, 28, and 29. After that the extra care charge drops down to \$44.00 per day. This is in addition to the \$155.00 per day for a semi-private room. The total hospital charge was \$6,268.15. Her husband immediately paid one-fourth of this, or \$1,567.04, which was the cost-sharing amount, leaving a balance due of \$4,701.11. Mr. \_\_\_\_\_ testified at the hearing that the hospital told him 75 percent of the entire amount would be paid by CHAMPUS and it was necessary for him to pay the 25 percent cost-share amount at the time of her admission. He went to his credit union and borrowed the money. He has received a statement from Penrose Hospital stating that \$1,214.82 is now due. Since he has already paid the cost-share of the entire 28 days treatment this is the amount actually in dispute.

A claim for the 28 days of care in the amount described above was submitted to the CHAMPUS fiscal intermediary, Mutual of Omaha (now Blue Cross of Washington and Alaska). The fiscal intermediary processed the claim and allowed payment for the first 21 days of hospitalization but denied care for the last seven

days. This denial of the last week of coverage was upheld on informal review and reconsideration on the basis that the patient's condition and treatment did not support the medical necessity of continued inpatient hospitalization beyond 21 days.

The sponsor appealed these denials to OCHAMPUS and a formal review decision was issued December 16, 1983. The decision upheld the previous denial of care beyond 21 days on the basis it was above the appropriate level of care and not medically necessary under the CHAMPUS Law and Regulation. The sponsor requested a hearing which was held May 4, 1984 at the El Paso County Judicial Building in Colorado Springs, Colorado before OCHAMPUS Hearing Officer .  
The sponsor, attended the hearing.

### ISSUES AND FINDINGS OF FACT

The issue in this hearing is whether inpatient alcohol rehabilitation care at the Riegal Center, Penrose Hospital, Colorado Springs, Colorado, from December 19 through December 25, 1981 was medically necessary and appropriate care under the provisions of the CHAMPUS Law and Regulation. Secondary issues to be discussed are the CHAMPUS handbook and burden of evidence.

Regulation DoD 6010.8-R is issued under the authority of and in accordance with Chapter 55, Title 10, United States Code. It establishes uniform policy for the worldwide operation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Chapter IV of the Regulation defines basic program benefits and paragraph A-1 provides in pertinent part as follows:

"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..."

Paragraph B(1) of Chapter IV authorizes benefits for institutional care as follows:

#### "Institutional Benefits.

1. General. Benefits may be extended for those covered services and supplies described in this Section B of this CHAPTER VI, provided by a hospital or other authorized institutional provider (as set forth in CHAPTER VI of this Regulation, 'Authorized Providers') when such services and supplies are ordered, directed and/or prescribed 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." (Emphasis added)

Chapter IV, paragraph G, provides "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: (emphasis theirs)

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

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."

In Chapter II(B)(103), medically necessary is defined as "the level of services and supplies (i.e. frequency, extent and kind) adequate for the diagnosis and treatment of illness or injury. Medically necessary includes concept of appropriate medical care."

This general requirement of "medically necessary" is further defined in relation to CHAMPUS coverage of inpatient care for treatment of alcoholism by Chapter IV(E)(4) as follows:

"4. Alcoholism. Inpatient hospital stays may be required for detoxification services during acute stages of alcoholism when the patient is suffering from delirium, confusion, trauma, unconsciousness and severe malnutrition, and is no longer able to function. During such acute periods of detoxification and physical stabilization (i.e., 'drying out') of the alcoholic patient, it is generally accepted that there can be a need for medical management of the patient, i.e., there is a probability that medical complications will occur during alcohol withdrawal, necessitating the constant availability of physicians and/or complex medical equipment found only in a hospital setting. Therefore, inpatient hospital care, during such acute periods and under such conditions, is considered reasonable and medically necessary for the treatment of the alcoholic patient and thus covered under CHAMPUS. Active medical treatment of the acute phase of alcohol withdrawal and the stabilization period usually takes from three (3) to seven (7) days.

a. Rehabilitative Phase. An inpatient stay for alcoholism (either in a hospital or through transfer to another type of authorized institution) may continue beyond the three (3) to seven (7) day period, moving into the rehabilitative program phase. Each such case will be reviewed on its own merits to determine whether an inpatient setting continues to be required.

#### EXAMPLE

If a continued inpatient rehabilitative stay primarily involves administration of antabuse therapy and the patient has no serious physical complications otherwise requiring an inpatient stay, the inpatient environment would not be considered necessary and therefore benefits could not be extended.

b. Repeated Rehabilitative Stays: Limited to Three (3) Episodes. Even if a case is determined to be appropriately continued on an inpatient basis, repeated rehabilitative stays will be limited to three (3) episodes (lifetime maximum); and any further rehabilitative stays are not eligible for benefits. However, inpatient stays for the acute stage of alcoholism requiring detoxification/stabilization and rehabilitation will normally not be approved for more than a maximum of three (3) weeks per episode.

c. Outpatient Psychiatric Treatment Programs. Otherwise medically necessary covered services related to outpatient psychiatric treatment programs for alcoholism are covered and continue to be covered even though benefits are not available for further inpatient rehabilitative episodes, subject to the same psychotherapy review guidelines as other diagnoses. (Refer to Section C of this CHAPTER IV; also refer to CHAPTER VII of this Regulation, 'Claims Submission, Review and Payment.')

The specific CHAMPUS Regulation dealing with alcoholism bears repeating: "When the inpatient setting is medically required, a combined program of detoxification/stabilization and rehabilitation will normally not be approved for more than a maximum of three weeks per episode." Several previous decisions of the Assistant Secretary of Defense (Health Affairs) involved alcohol rehabilitation and applied the above Regulatory provision. It was held that "Even in a case where the initial phase of inpatient rehabilitation stay for alcoholism qualifies for benefits, in order for such benefits to continue beyond 21 days there must be a determination of a medical need for the stay to continue (OASD HA 02-80). Another decision stated: "In order to extend CHAMPUS coverage for inpatient care beyond 21 days, the specified Regulation norm, the hospitalization must be necessary for treatment of the medical complications associated with alcoholism withdrawal." (OASD/ HA 80-04) This decision concluded: "The exception to the normal 21 day limit is the existence of severe medical effects of alcohol medically requiring an inpatient setting." Without these conditions, inpatient care beyond the normal period of 21 days in an inappropriate level of care under the CHAMPUS Regulation.

While the attending physician, Dr. \_\_\_\_\_ wrote to the fiscal intermediary that it was necessary for the beneficiary to remain in the rehabilitative program for the entire 28 days the reasons he gave were simply not documented by the medical records. The records received from Penrose Hospital show no severe medical problems nor any active treatment rendered for those save initially in the period of hospitalization. The only medication given except antabuse was thiamin and stress tabs and the chart shows that the patient was not seen by the attending physician after December 16th. I want to emphasize that my findings do not involve whether Dr. \_\_\_\_\_ was right or wrong in his decision that the patient should stay for the entire four-week period. I am only deciding whether the cost of treatment beyond the 21 days will be cost shared by CHAMPUS. Length and type of treatment is always the choice of the patient and the decision is based upon the physician's recommendations but this cannot be the basis for CHAMPUS coverage. Department of Defense Regulation 6010.8-R, Chapter IV, G, 78 in Notes and Exclusions to Coverage



states: "The fact that a physician may prescribe, order, recommend or approve a service or supply does not of itself make it medically necessary or make the charge an allowable expense."

My decision must be made on the basis of the substantive issues and the factual situation involved along with the statutory and regulatory provisions which are binding upon me as Hearing Officer. The record does not document continued medical necessity under the applicable CHAMPUS Regulation for cost-sharing of inpatient care and treatment beyond the normal 21 day period for alcohol detoxification/stabilization and rehabilitation. The beneficiary was admitted to the hospital on November 27, and the care from December 19 through 24 exceeded the normal 21 day period. Because of lack of documentation of medical complications associated with alcoholism withdrawal which would require continued inpatient stay, it is my recommended decision that care after December 18, 1981 be denied CHAMPUS coverage.

#### CHAMPUS BOOKLET MISINFORMATION/ESTOPPEL

At the hearing the sponsor made several arguments as to why care should be authorized beyond 21 days which do not pertain to medical necessity. One argument was he was not told CHAMPUS benefits would only be provided for 21 days of care and the Penrose Hospital alcohol treatment program personnel indicated that the program was for 28 days and the entire 28 days would be paid. As hearing officer I regret any misinformation that might have been given him by the staff at the treatment center, but it is obvious that information given by the hospital has no authority to bind the CHAMPUS program. CHAMPUS is an "at risk" benefits program. Claims are filed, appropriate information is obtained and the claim is adjudicated. Any information given to a beneficiary by a provider cannot act to make approval mandatory. The non-availability statement which had to be submitted in order for the beneficiary to receive this care clearly states that if it is later determined that the care provided is not a CHAMPUS benefit, CHAMPUS will not pay.

The sponsor brought a CHAMPUS booklet explaining benefits to the hearing and he had also previously submitted a portion of this book as Exhibit 27. This CHAMPUS book was published in 1979 and in the section on alcoholism states that coverage will be provided for treatment of alcoholism in a hospital for detoxification during the severe stages of alcoholism limited to a maximum of seven days. It then states: "Rehabilitative stays: Hospital care as defined above no longer required but a continued inpatient setting is determined to be medically necessary; limited to a maximum of three stays during an individual's lifetime (NOTE: Does not include inpatient stays for antabuse or other aversion therapy.)" (Exhibit 27, page 2) I would note that at the bottom of the page this booklet states: "Check CHAMPUS Regulation DoD 6010.8-R for complete guidance."

The new CHAMPUS book published in 1983, (Exhibit 27, page 4) states that for rehabilitation stays for alcoholism CHAMPUS will pay for up to 21 days including detoxification and in certain cases care can be extended beyond 21 days but they should check with the claims processor on that. The sponsor

stated at the hearing that the two books speak for themselves and that he had been misled by the one he had at the time of his wife's hospitalization. While I sympathize with the sponsor's relying on the CHAMPUS handbook, this cannot be the basis for my recommended decision. The CHAMPUS manual may have been a correct statement of the CHAMPUS coverage in 1979. I must follow the Regulation that was in effect in 1981 when the services were provided to his wife. At that time there was a 21 day limitation for alcoholism treatment unless there were medical complications which required an inpatient hospital setting. Clearly this is spelled out in the 1983 publication. CHAMPUS is a program which is authorized by the United States Congress and funds are appropriated for it. These Appropriation Acts contain mandatory restrictions on the coverage, as does the Regulation which is published under authority of the statute. These are constantly changing and are frankly voluminous. Of necessity when a booklet is published the coverage provisions must be condensed and sometimes are not as clear or detailed as we would wish. Also there are constantly changes in coverage, both by law and Regulation, and the CHAMPUS booklet cannot be republished, and more importantly distributed, to reflect every single change. When the booklet refers the reader to the Regulation, it is necessary to do that.

#### BURDEN OF EVIDENCE

The decision on a CHAMPUS claim on appeal must be based on evidence in the hearing file of record. Under the CHAMPUS Regulation, the burden is on the appealing party to present whatever evidence he can to overcome this initial adverse decision (Chapter X, 16, h, i). In deciding whether the extended hospital care beyond the normal 21 day period was necessary because of medical complications regarding alcoholism, much reliance must be placed upon the hospital records because they reflect the actual care and medical concerns at the time of hospitalization. These records do not show any medical complications which would require a prolonged hospital stay and I can only conclude that the patient stayed because the alcoholism treatment program was set up to be a 28 day program. There is not sufficient evidence in this case on which to base a reversal of the decision.

#### SUMMARY

It is the recommended decision of the hearing officer that the care provided to the beneficiary at Penrose Hospital from December 19 through December 25, 1981 be denied CHAMPUS cost-sharing because the care was above the appropriate level of care under the CHAMPUS Regulation and thus not medically necessary.

Dated this 22 day of June, 1984.

*Hanna M. Warren*  
HANNA M. WARREN  
Hearing Officer