ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

27 NOV 1984

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) File 84-26
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-26 pursuant to 10 U.S.C. 1071-1092, and DoD 6010.8-R, chapter X. The appealing party is the CHAMPUS beneficiary, who is represented by his mother and by counsel; the sponsor is the beneficiary's step-father, a retired enlisted member of the United States Air Force. The appeal involves the denial of inpatient psychiatric care at Mount Airy Psychiatric Center, Denver, Colorado. The amount in dispute is approximately $14,247.71.

The hearing file of record, the tape of oral testimony and the argument 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 hospitalization and related medical care from December 3, 1981, through January 16, 1982, be cost-shared by CHAMPUS after the primary coverage by other insurance has been exhausted, and that the hospitalization and related medical care after January 16, 1982, until discharge on August 29, 1982, should be denied CHAMPUS cost-sharing as it was above the appropriate level of care, and thus not medically necessary under the CHAMPUS regulation.

The Director, OCHAMPUS, with one major modification regarding the failure of the treating physician to document therapy sessions, recommends adoption of the Recommended Decision. The Director, OCHAMPUS, recommends issuance of a FINAL DECISION by the Assistant Secretary of Defense (Health Affairs) finding that the inpatient hospitalization from December 3, 1981, through January 16, 1982, was medically necessary, but that the inpatient hospitalization after January 16, 1982, until discharge on August 29, 1982, be denied CHAMPUS cost-sharing as it was above the appropriate level of care and not medically necessary. The Director, OCHAMPUS, further recommends that, consistent with prior FINAL DECISIONS, all claims by the treating physician for daily psychotherapy be denied CHAMPUS cost-sharing for failure to document the medical necessity and appropriateness of any of the therapy sessions.

Under DoD 6010.8-R, chapter X, the Assistant Secretary of Defense (Health Affairs) may adopt or reject the Hearing Officer's Recommended Decision. In the case of rejection or partial rejection, a FINAL DECISION may be issued by the Assistant Secretary of Defense (Health Affairs) based on the appeal record.

After due consideration of the appeal record, the Assistant Secretary of Defense (Health Affairs) adopts the finding by the Hearing Officer that the inpatient care from December 3, 1981, through January 16, 1982, was medically necessary and adopts the Hearing Officer's recommendation that inpatient care after January 16, 1982, through August 29, 1982, was not medically necessary and was above the appropriate level of care. The Recommended Decision of the Hearing Officer that related medical care (which includes therapy) from December 3, 1981, through January 16, 1982, be CHAMPUS cost-shared is rejected to the extent that it would allow claims by the treating physician (that were not paid in full by the beneficiary's other health insurance) for the reason that the treatment billed was not documented as required by the CHAMPUS regulation and prior FINAL DECISIONS.

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to deny CHAMPUS cost-sharing of any claims after December 16, 1982, through August 29, 1982, for inpatient care and to deny all claims for therapy by the treating physician.

FACTUAL BACKGROUND

Recommended Decision by Hearing Officer

The Hearing Officer's Recommended Decision in a cogent and competent manner summarizes the extensive factual background of this appeal and adequately addresses the issues of the appropriate level of care and the medical necessity of the beneficiary's inpatient hospitalization at Mount Airy Hospital. In addition, the Recommended Decision adequately addresses the secondary issues of estoppel, the significance of a nonavailability statement, and the burden of proof.

The Hearing Officer's Recommended Decision did not address the significance of the treating physician's, William M. Sykes, M.D., failure to document any of his billed services for daily individual psychotherapy. Since the Recommended Decision found that only the first 45 days were medically necessary and, apparently, the sponsor's other health insurance paid for the first 4 months of care, the question whether Dr. Sykes is entitled to CHAMPUS cost-sharing for his services during the initial 45 days may be moot. However, to ignore the failure to document the therapy rendered by the treating physician would be to ignore prior FINAL DECISIONS and the Regulation's requirements for documentation.

To the extent the Hearing Officer's Recommended Decision is inconsistent with the requirements of documenting care rendered, it is rejected; otherwise it is accepted in full and hereby incorporated by reference into this decision.

ISSUES AND FINDINGS OF FACT

As stated by the Hearing Officer in her Recommended Decision, the primary issue in dispute is whether the care provided to the beneficiary at Mount Airy Psychiatric Center was above the appropriate level of care and thus not medically necessary. Secondary issues addressed by the Hearing Officer included the argument of estoppel raised by the beneficiary, the significance of the nonavailability statement, and the burden of proof. I agree with and adopt the Hearing Officer's findings on these issues.

Additionally, whether the individual psychotherapy provided was adequately documented to establish the medical necessity and appropriateness of therapy should be explicitly treated as a primary issue.

Medical Documentation of Inpatient Psychotherapy

The CHAMPUS regulation, DoD 6010.8-R, chapter IV, A.1., defines the scope of benefits 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. . . . 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. . . ."

Chapter IV, A.5., provides:

> "Right to Information. As a condition precedent to the provision of benefits hereunder, OCHAMPUS and/or its CHAMPUS Contractors shall be entitled to receive information from a physician or hospital or other person, institution, and/or organization . . . providing services or supplies to the beneficiary for which claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance, testing, monitoring, or

examination or diagnosis of, or treatment rendered, or services and supplies furnished to a beneficiary and shall be necessary for the accurate and efficient administration of CHAMPUS benefits. . . Before an individual's claim of benefits will be adjudicated, the individual must furnish to CHAMPUS that information which may reasonably be expected to be in his or her possession and which is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim."

Chapter IV, A.10., provides:

"Utilization Review: Quality Assurance. Prior to the extension of any CHAMPUS benefits under the Basic Benefit Program as outlined in this CHAPTER IV, claims submitted for medical services and supplies rendered CHAMPUS beneficiaries are subject to review for quality of care and appropriate utilization. The Director, OCHAMPUS (or a designee), is responsible for utilization review and quality assurance activities and shall issue such generally accepted standards, norms and criteria as are necessary to assure compliance. Such utilization review and quality assurance standards, norms and criteria shall include, but not be limited to, need for inpatient admission, length of inpatient stay, level of care, appropriateness of treatment, level of institutional care required, etc. Implementing instructions, procedures and guidelines may provide for retrospective, concurrent and prospective review, requiring both inhouse and external review capability on the part of both CHAMPUS Contractors and OCHAMPUS."

Institutional benefits are set forth in section B of chapter IV of the Regulation. The Regulation provides in addressing institutional benefits that:

"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 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." DoD 6010.8-R, chapter IV, B.1.

Chapter VI of the Regulation addresses authorized providers. Section B.4.b. of Chapter VI in recognizing certain psychiatric hospitals as authorized institutional providers states:

> "In order for the services of a private psychiatric hospital to be covered, the hospital must comply with the provisions outlined in Paragraph B.4. of this CHAPTER VI except that Subparagraph B.4.a.(9) does not apply. In the case of private psychiatric hospitals, all must be accredited by the JCAH in order for their services to be cost-shared under CHAMPUS." DoD 6010.8-R, Ch. VI, R.4.b(2). (Emphasis in original.)

The Regulation further provides:

> "Factors to be considered in determining whether CHAMPUS will cost-share care provided in a psychiatric hospital include, but are not limited to, the following considerations:
>
> * * *
>
> "(b) Can the services being provided be more economically provided in another facility or on an outpatient basis."

Chapter VI, B.4.a.(2), includes the requirement that:

> "[The hospital] maintains clinical records on all inpatients (and outpatients if the facility operates an outpatient department or emergency room)."

This requirement applies to all acute care hospitals and, by reference, to psychiatric hospitals.

The Regulation in addressing professional services provides in chapter IV, C.1., that:

> "General. Benefits may be extended for those covered services described in this section C of this CHAPTER IV, which are provided in accordance with good medical practice and established standards of quality by physicians or other authorized individual

> professional providers. . . . Such benefits are subject to any and all applicable definitions, conditions, exceptions, limitations, and/or exclusions as may be otherwise set forth in this or other CHAPTERS of this Regulation.
>
> * * *
>
> "a. Billing Practice. To be considered for benefits . . . Such billings must be fully itemized and sufficiently descriptive, to the satisfaction of CHAMPUS."

The Regulation specifically addresses psychiatric procedures in chapter IV, C.3.i:

> " i. Psychiatric Procedures.
>
> "(1) Maximum Therapy Per Twenty-Four (24)-Hour Period: Inpatient and Outpatient. Generally, CHAMPUS benefits are limited to no more than one (1) hour of individual and/or group therapy in any twenty-four (24)-hour period, inpatient or outpatient. However, for the purpose of crisis intervention only, CHAMPUS benefits may be extended for up to two (2) hours of individual psychotherapy during a twenty-four (24)-hour period.
>
> "(2) Psychotherapy: Inpatient. In addition, if individual or group psychotherapy, or a combination of both, is being rendered to an inpatient on an ongoing basis (i.e., non-crisis intervention), benefits are limited to no more than five (5) one-hour therapy sessions in any combination of group or individual therapy sessions in any seven (7) day period."

Chapter VII, section A, provides:

> "The Director, OCHAMPUS (or a designee), is responsible for assuring that benefits under the CHAMPUS Program are paid only to the extent described in this Regulation. Before benefits can be paid, an appropriate claim must be submitted which provides sufficient information as to the beneficiary identification, the medical services and supplies provided, and double coverage information in order to permit proper, accurate and timely adjudication of the claim. . . ."

In chapter VII, B.2., "patient treatment information" requires in subsection i that:

> "Physicians or Other Authorized Individual Professional Providers. For services provided by physicians (or other authorized individual professional providers), the following information must also be included:
>
> "(1) Date of each service.
>
> "(2) Procedural code and/or narrative description of each procedure/service for each date of service.
>
> "(3) Individual charge for each item of service or each supply for each date.
>
> "(4) Detailed description of any unusual complicating circumstances relating to the medical care provided for which the physician or other individual professional provider may choose to submit separately."

The Regulation also provides for a "right to additional information":

> "As a condition precedent to the provision of benefits under this Regulation, OCHAMPUS . . . may request and shall be entitled to receive information from a physician or hospital or other person, [or] institution . . . providing services or supplies to the beneficiary . . . . Such information and records may relate to the attendance, testing, monitoring, or examination or diagnosis of, or treatment rendered, or services and supplies furnished to, a beneficiary and as shall be necessary for the accurate and efficient administration of CHAMPUS benefits." DoD 6010.8-R, chapter VII, B.4.

The Regulation further provides that "the 'burden of proof' is on the appealing party affirmatively to establish by substantial evidence, the appealing parties entitlement under law and this Regulation to the authorization of CHAMPUS benefits for approval as an authorized provider." DoD 6010.8-R, chapter X (amendment 19), 48 Federal Register 10311, March 11, 1983.

Since CHAMPUS requires private psychiatric hospitals to be accredited by the JCAH, the JCAH standards establish the minimum records necessary for documentation for CHAMPUS claims. The jurisdiction under which the provider(s) is licensed may add further requirements.

The JCAH's Consolidated Standards Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities (1981 edition) sets forth specific requirements relating to medical records and progress notes. (Hereinafter, it will generally be referred to as the JCAH Manual.) The JCAH Manual in the introductory pages titled "Using the standards" states:

> "This Manual contains what JCAH currently considers to be the most useful and appropriate standards for evaluating and improving the quality of care provided to . . . child and adolescent psychiatric . . . patients. Except as indicated in the Table of Applicable Standards in Appendix A of this Manual and in the standards themselves, the standards are applicable to all services, units, programs, and facilities providing services to the aforementioned patients."

Standard 15, which deals with patient records, provides:

> "15.1. The facility shall maintain a written patient record on each patient.
>
> "15.1.1. The patient record shall describe the patient's health status at the time of admission, the services provided, and the patient's progress in the facility, and the patient's health status at the time of discharge.
>
> "15.1.2. The patient record shall provide information for the review and evaluation of the treatment provided to the patient."

Standard 18 addresses treatment plans and provides:

> "18.1. Each patient shall have a written, individualized treatment plan that is based on assessments of his or her clinical needs.
>
> * * *
>
> "18.1.3.2.1. The master treatment plan shall contain objectives and methods for achieving them.
>
> * * *
>
> "18.1.11. The treatment plan shall describe the services, activities and programs planned for the patient and shall specify the staff members assigned to work with the patient.

"18.1.12. The treatment plan shall specify the frequency of treatment procedures.

"18.1.13. The treatment plan shall delineate the specific criteria to be met for termination of treatment. Such criteria shall be a part of the initial treatment plan."

Standard 18.2 addresses progress notes. It provides:

"18.2. Progress notes shall be entered in the patient's record and shall include the following:

"a. documentation of implementation of the treatment plan;

"b. documentation of all treatment rendered to the patient;

"c. chronological documention of the patient's clinical course;

"d. descriptions of each change in each of the patient's conditions; and

"e. descriptions of the response of the patient to treatment, the outcome of treatment, and the response of significant others to important intercurrent events.

* * *

"18.2.7 Progress notes shall be used as the basis for reviewing treatment plans."

Standard 18.3 provides "Multidisciplinary case conferences shall be regularly conducted to review and evaluate each patient's treatment plan and his or her progress in obtaining stated treatment goals and objectives."

The JCAH Manual defines an "inpatient program" as "Programs that provide services to persons who require an intensity of care that warrants 24-hour supervision in a hospital or other suitably equipped setting." The Manual defines "shall" as "used to indicate a mandatory standard."

The standards set forth in the JCAH Manual are the applicable standards for the period of care covered by this appeal. The standards dealing with records have been carried forward in the JCAH's Consolidated Standards Manual/83 for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities.

More importantly, these record requirements are not new. For example, the JCAH's Consolidated Standards for Child, Adolescent, and Adult Psychiatric, Alcoholism and Drug Abuse Programs (1979 edition) provides for, with minor differences, essentially the same requirements.

Having noted the CHAMPUS requirements, especially the JCAH requirement for case specific information, a summary of the information furnished in this appeal is necessary.

The documentation provided by the appealing parties included: admission summary; two staff summaries from case conferences; progress notes from the hospital staff; physician orders; numerous school evaluations and reports from the period prior to the beneficiary's admission as an inpatient; test results and summaries from the initial 30-day admission; and a discharge summary.

Although the "documentation" appears to be quite voluminous, most of it is from the 30-day evaluation period or prior to the beneficiary's admission. There are no notes or records detailing or describing a single psychotherapy session. As noted by the Hearing Officer:

> "At the conclusion of the hearing I told the attorney representing the beneficiary and his family that I found it difficult to believe additional medical records were not available on this patient, given the length of his hospital stay and the level of care he was receiving. We agreed that the mother would sign a release and that I would contact Dr. Sykes to see if any additional records were available and the attorney would contact the hospital. In response to my inquiry Dr. Sykes told me he personally had no records and all his notes and records would be in the file at Mount Airy Psychiatric Center. Additional documentation was received from Mount Airy [academic history/educational evaluation, review educational evaluation, occupational therapy evaluation and treatment plan, summary sheet, discharge summary, admission summary, treatment plan, and interim summaries].
>
> * * *
>
> "Although, the attending physician in this case saw the patient, his lack of documentation of his intensive five times a week psychotherapy for this young man does not allow me to override the evaluation of eight psychiatrists who examined most or all of the documentation I have available to me,

> even though they did not see the patient. I am aware that Dr. Sykes wrote several times to the fiscal intermediary stating in his professional opinion this patient needed to remain in an intensive inpatient setting although no underlying documentation was provided."

A billing statement is not and never has been adequate documentation to substantiate a CHAMPUS claim. Claims generally are paid on the basis of a billing statement; however, if the issue is raised whether the treatment was medically necessary, it must be documented and that requires more than a billing statement. As previously noted, the Regulation places the burden of proof on the appealing party. In general, the applicable JCAH standards must be complied with.

The file includes two multidisciplinary case conferences. The JCAH requires:

> "18.3 Multidisciplinary case conferences shall be regularly conducted to review and evaluate each patient's treatment plan and his or her progress in attaining the stated goals and objectives.
>
> "18.3.1 Multidisciplinary case conferences shall be documented and the results of the review and evaluation shall be recorded in the patient's record."

The two conferences totally fail to document what therapy was provided. Summaries from a multidisciplinary case conference are not a substitute for progress notes.

In Dr. Sykes' interim (30-day) summary dated January 7, 1982, he notes the beneficiary was hospitalized for stealing and exposing himself. Justification for continued hospitalization was stated as "currently being evaluated." The current status of treatment planning was "currently in evaluation period." Current status of discharge planning was "none." Though the beneficiary was being evaluated, the prognosis was given as fair and hospitalization listed as 6 months to 1 year.

In the February 8, 1982, summary, Dr. Sykes for nearly the entire summary indicates "see previous summary." All of the summaries from February through June referred to the previous summary for justification for continued hospitalization. This takes the summaries back to the January summary which gave no reason except "currently being evaluated."

The July 15, 1982, summary gave "underlying anger and depression not resolved enough" as the reason for the continued hospitalization.

The monthly interim summaries, even if they were detailed, are not a substitute for progress notes. In this case they provided no medical information but were simply cursorily filled out with the most frequent comment being - see previous summary. The summaries are not adequate medical documentation.

Questions involving required documentation have been addressed in prior Final Decisions. In OASD(HA) Case File 83-50, which also involved inpatient therapy provided by a psychiatrist, it was stated, "Generally accepted medical practice requires periodic progress notes be recorded by a provider detailing the care rendered and the dates of care rendered." The decision went on to state:

> "I must emphasize to the appealing party that CHAMPUS does not disbelieve the psychiatrist or her. The issue herein encompasses not only if and when the services were performed but also whether the claimed services were the kind of services required by this beneficiary."

Documentation is needed to determine if the care provided was medically necessary. Final Decision OASD(HA) Case File 83-10 addressed the documentation needed to perfect a CHAMPUS claim.

OASD(HA) Case File 83-10 involved inpatient psychotherapy by both a psychiatrist and a psychologist. It was held that:

> "It is usual and customary for therapists to record notes of their sessions with patients. In the absence of such notes or other appropriate documentation, it is difficult to determine that services were actually performed or that the services were appropriate and medically necessary in the treatment of the patient.
>
> "CHAMPUS will cost-share only those medically necessary services which are appropriately and adequately documented."

The Final Decision in OASD(HA) Case File 83-27 specifically addressed, as a primary issue, whether sufficient documentation was provided to determine if the psychotherapy sessions provided the beneficiary were medically/psychologically necessary and appropriate medical care for coverage under CHAMPVA. (CHAMPVA beneficiaries are entitled to medical care subject to the same or similar limitations as medical benefits furnished to certain CHAMPUS beneficiaries.) OASD(HA) Case File 83-27 involved outpatient psychotherapy and the treating physician's office notes were illegible. The decision held:

> ". . . I find insufficient evidence to support a finding of medical necessity for any of the psychoanalytic therapy. This finding does not imply that the therapy was not required by the patient, only that the provider has failed to document adequately the case, his choice of treatment, the treatment plan, and the case summary. In the absence of adequate documentation to support the medical/psychological necessity of the therapy, [CHAMPUS] coverage cannot be authorized."

A private psychiatric hospital must be accredited by the JCAH to be an authorized CHAMPUS provider. In this appeal, therefore, the Mount Airy Psychiatric Center and staff physicians were required by the CHAMPUS regulation to have medical records that would satisfy the JCAH standards to support the beneficiary's inpatient psychiatric care. Under the JCAH Manual, professional staff of the Center must also satisfy the JCAH standards for patient records, treatment plans, and progress notes. The professional provider, therefore, when exercising his staff privileges at the Center as the treating physician, must adhere to the JCAH standards for medical records in support of the beneficiary's inpatient psychiatric care.

The adequate medical documentation that CHAMPUS requires in support of the medical necessity and appropriateness of inpatient psychiatric care is, at a minimum, compliance with JCAH standards. (If more demanding standards are required by the State of Colorado, since that is where the care was provided, then those standards would have to be satisfied.) The inpatient therapy provided the beneficiary by Dr. Sykes has not been documented in accordance with the requirements of the JCAH and it is, therefore, not in compliance with the requirements under the CHAMPUS regulation and prior FINAL DECISIONS. In the absence of any other credible evidence establishing the performance and medical necessity of therapy, OCHAMPUS claims must be denied.

The additional documentation that was obtained after the hearing was sent to the Colorado Foundation for Medical Care for medical review. The medical reviewer in addition to giving his opinion that "the documentation did not support the intensive level of care of a hospital setting" made the following statement:

> "All disciplines involved have appropriately evaluated and treated this child and there is adequate documentation of that; however, there is no adequate documentation of the attending physician's work."

I find that the therapy sessions billed by the professional provider were not adequately documented and, in fact, were not documented at all. Therefore, all claims for therapy sessions

from December 3, 1981, through August 29, 1982, are denied CHAMPUS cost-sharing based on the absence of documentation necessary to support the medical necessity and appropriateness of the claimed therapy. In addition, having adopted the Hearing Officer's Recommended Decision regarding the inpatient stay, I find that the inpatient setting was not medically necessary nor the appropriate level of care from January 17, 1982, to August 29, 1982. The beneficiary's mental health care after January 16, 1982, could have been provided in a residential treatment center. The beneficiary did not require the type, level, and intensity of service that could be provided only in an inpatient hospital setting. As previously noted, the Regulation excludes services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care. Consistent with this Regulation provision and prior FINAL DECISIONS such as OASD(HA) Case File 83-55, the institutional billing and all other related care are denied CHAMPUS cost-sharing from January 17, 1982, to August 29, 1982.

SUMMARY

In summary, it is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) that CHAMPUS cost-share as secondary coverage, the beneficiary's inpatient care from December 3, 1981, through January 16, 1982, as medically necessary care; however, the medical necessity of the inpatient setting after January 16, 1982, was not established and the care **cannot be cost-shared under CHAMPUS.** The record supports a determination that after January 16, 1982, the care was above the appropriate level and could have been performed at a residential treatment center or other lower level of care. Therefore, coverage of the episode of care, including the institutional billings and the therapy provided by the treating physician, from January 17, 1982, to August 29, 1982, is denied CHAMPUS cost-sharing as being above the appropriate level of care and not medically necessary.

In addition, the CHAMPUS claims involving inpatient therapy by the professional provider from December 3, 1981, to August 29, 1982, cannot be cost-shared as billed as there was not adequate medical documentation of the therapy sessions necessary to support the medical necessity or appropriateness of the claimed therapy.

The Director, OCHAMPUS, is directed to review the beneficiary's claims and to take action as appropriate under the Federal Claims Collection Act to recover any erroneous payments issued in this case. 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.

REC DEC
84-26

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 Hanna M. Warren in the CHAMPUS appeal case file of , and is authorized pursuant to 10 U.S.C. 1079-1089 and DoD 6010.8-R, Chapter X. The appealing party is the beneficiary as represented by his mother . The Sponsor is (Retired). The appeal involves the denial of CHAMPUS cost-sharing ror inpatient psychiatric hospitalization at Mount Airy Psychiatric Center from December 3, 1981 through August 29, 1982 and charges of the attending psychiatrist, William M. Sykes, M.D. The amount in dispute is approximately $14,247.71.

The hearing file of record has been reviewed along with testimony and statements of counsel at the hearing. It is the OCHAMPUS position that the Formal Review determination, issued September 3, 1983 denying CHAMPUS cost-sharing of the inpatient psychiatric hospitalization and related medical care after 45 days of inpatient hospitalization be upheld on the basis that care beyond the initial 45 day period was not medically necessary and was above the appropriate level of care under the CHAMPUS Regulation.

The Hearing Officer, after due consideration of the appeal record, concurs in the recommendation of OCHAMPUS to allow 45 days of care but after that period to deny CHAMPUS cost-sharing. The Recommended Decision of the Hearing Officer is, therefore, to allow benefits for the period December 3, 1981 through January 16, 1982 and deny cost-sharing for the beneficiary's inpatient psychiatric hospitalization and related medical care from January 16, 1982 through August 29, 1982.

FACTUAL BACKGROUND

This young male beneficiary was fifteen years old at the time he was hospitalized at Mount Airy Psychiatric Center on December 3, 1981. He was discharged August 29, 1982. had been adopted at six months of age and has a brother who is a year older than he is. His adoptive mother and father are divorced and he lives with his brother, mother and her second husband. had been diagnosed as having minimal cerebral dysfunction at age six and placed on Mellaril. In 1975 he was placed on Cylert. His mother testified at the hearing that he has also been tried on two other drugs briefly during his childhood. He displayed encopresis until age 12. He had some behavior problems during his earlier years, having been seen by a child psychiatrist for a period and in the Child Guidance Clinic at Fitzsimmons Army Medical Center in 1975 and again in 1978. He was in a class for students with emotional and behavioral handicaps for a brief period of time and had difficulties in his

school work even though he had "at least average if not above average intelligence" (exhibit 38). He was suspended from school at one time in 1978 and his mother wrote that at the fourth grade level he was involved in drugs, pot, alcohol and sexual experimentation. Later his behavior included lying, stealing, shoplifting and he was accused of two incidents of sexual molestation. After the latest accusation, [redacted] was referred to the County department of social services and they recommended Dr. Sykes for evaluation. After brief outpatient visits, [redacted] was admitted to Mount Airy Psychiatric Center. The admission diagnosis was dysthymic disorder.

The claims for hospitalization and related medical care by the attending physician, William M. Sykes, M.D., were submitted to the CHAMPUS fiscal intermediary, Mutual of Omaha. The fiscal intermediary initially denied all care provided to the beneficiary and both Dr. Sykes and [redacted] protested this decision. The informal review upheld the denial of cost sharing but the reconsideration decision by the fiscal intermediary was to allow the initial 30 days of care. A review was requested by [redacted] and a formal review decision was issued by OCHAMPUS September 2, 1983 in which the initial 45 days of care was allowed but it was determined that an inpatient psychiatric hospital setting was above the appropriate level of care beyond that period of time. An attorney representing the beneficiary filed a timely request for hearing and a hearing was held December 20, 1983 before OCHAMPUS Hearing Officer Hanna M. Warren at Fitzsimmons Army Medical Center, Aurora, Colorado. Present at the hearing were [redacted] and her attorney, James Bicknell. Barbara Udelhofen attended the hearing representing OCHAMPUS.

ISSUES AND FINDINGS OF FACT

The primary issue in dispute is whether the care provided the beneficiary at Mount Airy Psychiatric Center was above the appropriate level of care and thus not medically necessary under the CHAMPUS Law and Regulation. Secondary issues that will be addressed include the issues of related care, delay in notification of denial, burden of evidence and the Nonavailability Statement.

Chapter 55, Title X, United States Code, authorizes a health benefits program entitled Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The Department of Defense Appropriation Act of 1979, Public Law 95457, appropriated funds for CHAMPUS benefits and contains certain limitations which have appeared in each Department of Defense Appropriation Act since that time. One of the limitations is that CHAMPUS is prohibited from using appropriated funds for "...any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury or body malfunction as assessed or diagnosed by a physician, dentist, or clinical psychologist..."

Department of Defense Regulation DoD 6010.8-R was issued under the authority of statute to establish policy and procedures for the administration of CHAMPUS. The Regulation described CHAMPUS benefits in Chapter IV, A.1 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, as well as professional ambulance service, prescription drugs, authorized medical supplies and rental of durable equipment."

Chapter II of the Regulation, Subsection B, 104, defines medically necessary as "the level of services and supplies, (i.e., frequency, extent and kinds), adequate for the diagnosis and treatment of illness or injury. Medically necessary includes concept of appropriate medical care." Chapter II, B. 14, defines appropriate medical care in part as "That medical care where the medical services performed in the treatment of a disease or injury are in keeping with the generally acceptable norm for medical practice in the United States," where the provider is qualified and licensed and "the medical environment where the medical services are performed is at the level adequate to provide the required medical care." Chapter IV, paragraph G provides in pertinent part: "In addition to any definitions, requirements, conditions and/or limitations enumerated and described in other Chapters of this Regulation, the following are specifically excluded for the CHAMPUS Basic Program:

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

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...

NOTE: 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, even though it is not specifically listed as an exclusion."

Chapter IV, B, specifically covers institutional benefits and provides scope of coverage and exclusions. The requirement of care rendered at an appropriate level is repeated in paragraph (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..."

The beneficiary's mother testified at the hearing that her son had committed a criminal act in October of 1981 (sexual molestation described above), and the family contacted the district attorney to try and obtain help although he was not formally charged with a crime. They were referred to the Social Services Department and the people in that Department recommended they contact Dr. Sykes for assistance. According to the mother's testimony, they saw Dr. Sykes in six outpatient visits before the beneficiary was hospitalized and for seven outpatient visits after he was discharged from the hospital. She and her husband signed a document they would be financially responsible both to Dr. Sykes and the hospital. She testified that on their very first visit to Dr. Sykes he recommended hospitalization. They obtained a Non-availability Statement at

Fitzsimmons signed by Dr. Black and the mother stated she thought this statement meant CHAMPUS would pay 75 percent of the costs. The first she knew there were problems regarding Dr. Sykes' care was in March of 1982 when she received a letter saying the diagnosis and treatment reports did not agree. She gave this correspondence to Dr. Sykes the next time they met together and he told her that he had problems occasionally with CHAMPUS coverage but had never had a claim totally refused. From the beginning of treatment Dr. Sykes sent his statements to the mother and she sent the bills on to Blue Cross/Blue Shield. In addition they were paying $100.00 per month directly to Dr. Sykes. He started adding interest to his bill when the amount got to $9,000.00, which was approximately six months into treatment. She testified that the last of the bills had been paid approximately two months before the hearing. In my opening paragraph I stated the amount in dispute to be approximately $14,247.71. The testimony at the hearing was that this is the amount which was actually paid by the beneficiary's parents out of pocket. The family had other insurance coverage which paid for the first four months of care according to the testimony. This would be primary coverage and CHAMPUS would be secondary coverage. Since it is my recommended decision that CHAMPUS benefits should be allowed for the first 45 days, any medical costs not paid by the primary coverage during this period, i.e. testing physician, medical charges, etc., can be submitted to CHAMPUs for approval.

When this claim was received by the fiscal intermediary its employees wrote and requested additional information. They asked for an admission history and physical, doctors orders, progress notes, a discharge summary and also a treatment report form which was to be completed. The response to this request appears to be a great deal of material from previous school counseling that the beneficiary had received in various schools and also some material from the family therapy service at Fitzsimmons Hospital. Another request for the same information was sent and Dr. Sykes responded by letter dated May 14, 1982 (Exhibit 25). He enclosed a copy of the case conference held on January 22, 1982 which is Exhibit 22, page 1. The fiscal intermediary wrote again requesting a treatment report, admission history, physical, orders, progress notes, discharge summary, etc. (Exhibit 26). It appears from the file that no more information was received at this time except possibly the psychological evaluation (Exhibit 24).

What records were available were sent to the American Psychiatric Association for peer review. Three psychiatrists evaluated the material and the consensus was there was not enough information to make a determination as to the appropriateness of the length of hospitalization. One reviewer said: "A very full staffing report is offered, but what is glaringly lacking is an account of the five times per week psychotherapy which he has been receiving. Without this it is difficult to judge the appropriateness of this very lengthy hospitalization and the progress he is making. I would like to see a very full account of the treatment offered by his psychiatrist before completing this review. Until such a report is obtained, further payment should be denied" (Exhibit 27, page 2). A second reviewer stated that on the basis of the case conference report he found the description of the patient and diagnosis did not match, and therefore, it was difficult to answer whether the length of hospital stay was appropriate. "The proposed length of hospitalization would not seem to be appropriate for dysthymic disorder, but might be appropriate for a psychotic or severe borderline character" (Exhibit 27, page 3). The third reviewer stated that the level of care as an inpatient was appropriate for a limited time. "Information available suggests the rational for inpatient care

is to provide relief to family. If this is the sole indication for hospitalization level of care should be residential or group home and level of care is not appropriate. Further information about indications for hospitalization is needed." This reviewer also stated that the diagnosis did not correspond with the information documented and concluded "Length of stay seems excessive for described symptoms. Hospitalization may be needed for a diagnostic evaluation and initiation of treatment strategy for non-hospital setting. This should require 30-45 days only" (Exhibit 27, page 4).

Based upon the results of the peer review, the denial of CHAMPUS benefits was upheld. A case conference report for a conference on July 16, 1982 (Exhibit 30, page 1) was then submitted by Dr. Sykes who stated in his cover letter (Exhibit 32): "I have an on-going second opinion by Dr. Robert Carlson, child psychologist, who is in attendance at least weekly on treatment. There has been no disagreement whatsoever that because of the degree of depression that he has needed on-going psychiatric therapy. A discharge date has been set for October 3, 1982." No letter or report by Dr. Carlson was submitted.

The case was again sent for peer review with the July case conference report included. The first reviewer stated there was just not enough information: "Once again what is missing is (1) a history, (2) a report of his individual treatment. These need to be submitted before I can make an adequate evaluation and recommendation for reimbursement. Also, I must agree with the other reviewers who question the diagnosis of dysthymic disorder. The description of his behavior certainly suggests a severe behavior disorder and/or a developmental disorder. Evidences of depression are largely lacking" (Exhibit 34, page 4). The second reviewer said that the "recommendations resulting from the previous review included obtaining a detailed description of the intensive psychotherapy and perhaps obtaining a detailed psychiatric consultation. I find no evidence that either one of these suggestions has been followed through with and, in fact, the information contained in this report is in some ways less complete than the previous report. While there are several pages of reports by recreational, occupational, and other therapists, there is no report from the treating psychiatrist. It is quite possible that this extensive five day/week treatment in an inpatient setting is required and totally justified for this fifteen year old, however, at the moment there is no written description and/or explanatory information that would support this conclusion. Therefore, I recommend again that payment be withheld until and unless adequate documentation and descriptions of the psychotherapy of the patient is provided" (Exhibit 34, page 2). The third reviewer found that she could not suggest approval on the basis of the information which had been provided. In answer to the question as to whether length of inpatient stay was appropriate she answered: "Questionable. If impulse control problems are rationale for continued inpatient care, examples of impulsivity requiring protective setting need to be provided. If parents' lack of availability (emotionally or physically) is rational for continued stay, other settings (group home, residential treatment, foster family should be actively pursued)." The issue of the diagnosis not matching the symptoms or treatment plan was again raised and she concluded: "Lack of specificity about behaviors/symptoms during continued stay, as well as absence of description of nature of therapeutic alliance with psychiatrist (attachment, resistance, working through, acting out) make this difficult to assess. In the absence of specific information about the nature of individual psychotherapy (in spite of questions) I cannot suggest approval based on information supplied" (Exhibit 34, page 3).

Again on the basis of peer review, the denial of reimbursement was upheld. The hearing file shows receipt of large amounts of material from the Cherry Creek School District regarding the beneficiary's problems in school and their attempts to assist him. Another letter was written by Dr. Sykes (Exhibit 39) stating he had supplied the two case conference reports and was attaching a psychological evaluation. "His diagnosis from admission throughout was dsythymic disorder and conduct disorder. The history is fully contained in the case conferences and elaborated upon by several disciplines at the hospital. It was clear from the beginning of my contact with the family that the patient needed inpatient hospitalization at a residential adolescent treatment center and this was clearly the treatment of choice. This was also confirmed by Dr. Robert Carlson, a child psychiatrist, who is in consultation at Mount Airy Psychiatric Center". In addition, the beneficiary's mother wrote and gave a brief history of what led up to the hospitalization (Exhibit 40). No report was submitted by Dr. Carlson.

At this time the information was again sent for APA peer review. The first reviewer states that on this third review they are presented with an enormous amount of material (I assume he means from the school district) and he is sympathetic to the parents' letter of appeal: "That letter clearly documents severe problems and makes a persuasive case for the need of hospitalization." He finds the psychological reports helpful, although in his opinion both are flawed by the fact that the Rorschach responses are not mentioned, "although presumably a Rorschach was done and was billed for. I view this omission as a serious deficiency in the test reports." The reviewer says that his denial again has to do with the attending psychiatrist's failure to offer adequate documentation; that he does not agree with the diagnosis, and additional records should be provided if they are available. He rejects the offer of the psychiatrist to discuss the case with him because the reviewers do not know the name of the psychiatrist and "secondly, it is up to him or her to document the history and the therapy in a readable, understandable and reasonably detailed way. I cannot recommend cost-sharing on the part of CHAMPUS until this record has been brought up to minimal standards. At the same time I do not feel that the parents can be held financially liable for the care which was necessary and which is deficient in documentation. It is up to the provider to furnish evidence of his work and up to the hospital Medical Director to see that adequate standards of documentation are maintained" (Exhibit 43, pages 4 and 5). The second reviewer states: "A great deal of additional information is provided. However, this information seems to totally consist of psychological testing report, case conferences, letters of appeal, old reports from school and all kinds of people who have had contact with this youngster. The specific information I feel is necessary to reach a reasonable conclusion as to the appropriateness of the care and length of stay, etc., is still missing. Specifically I refer to the lack of information provided by the attending psychiatrist. I would like to see a history as done by the psychiatrist, a report of this patient's individual sessions with particular reference to the conflicts seen, how they're being treated and what the results of this treatment are." He again questions the diagnosis and concludes: "Information from parents, teachers, psychologists, support personnel, etc. is very meaningful and useful but does not substitute for specific information from the leader of the team who must be the attending physician. Until such information is obtained from this person, I would recommend the payment for his or her services be withheld" (Exhibit 43, pages 2 and 3). The third reviewer states that because of lack of any meaningful description of the nature of the

therapeutic process between the attending physician and the patient it is very difficult to make a determination but she finds that the level of care was appropriate in December 1981. She again recommends that another placement should have been considered and still feels that the diagnosis does not conform to the symptoms and treatment. She did recommend hospitalization for 60 to 90 days, but no longer than that based upon lack of information (Exhibit 43, page 6).

Before making the reconsideration decision as provided in the Regulation, the fiscal intermediary sent the case for APA peer review to three different psychiatrists. The first stated that he would limit payment tc the first 30 days as care was needed during that period but the need for any further care was unclear based upon lack of admission notes, mental status, discnarge notes, summary of individual and family therapy sessions, etc. He found the treatment program not to be appropriate for the diagnosis given (Exhibit 45, page 2). The second reviewer felt the diagnosis given by the treating physician was clearly incorrect, but he found the initial hospitalization to be apprcpriate. He concludes: "However the information provided by the attending psychiatrist in this case is entirely unsatisfactory." He recommends that benefits be refused because there has been no response to the continuing requests for information (exhibit 45, pages 3 and 4). The third reviewer stated: "I even find difficulty in justifying inpatient care for this troubled acting out youngster for any period of time longer than initially required to complete an adequate clinical evaluation. This could have been accomplished on a 30 day stay. It would appear to me that any long term care could as well have been accomplished in a residential facility or even an outpatient or partial hospitalization program" (Exhibit 45, page 5).

On the basis of peer review the fiscal intermediary approved care for 30 days. Upon being notified of this the beneficiary's mother wrote to CHAMPUS and asked for additional consideration, enclosing copies of all the correspondence she had with CHAMPUS and also Blue Cross/Blue Shield of Colorado regarding this claim. This was treated as a request for formal review and a formal review decision was issued September 2, 1983. This formal review decision extended CHAMPUS cost-sharing for the first 45 days of inpatient care and denied it after that period. Prior to this determination the OCHAMPUS medical director, who is a psychiatrist, reviewed the case. He also questioned whether the diagnosis was accurate and concurred with one of the peer reviewers that an initial evaluation period of 30 to 45 days was appropriate for a patient who had serious impulse control problems. He found, though, that "Standards of care and conventional medical treatment in the U.S. would warrant that following that evaluation period the patient would have been a candidate for longer-term hospitalization at a residential treatment center." He found the acute psychiatric level of care was "too intensive and too comprehensive for a young man with problems such as this patient had" and recommended 45 days of inpatient care for the initial evaluation. The formal review decision of CHAMPUS adopted the recommendation of the medical director to allow 45 days of care and found that inpatient hospitalization beyond that period was not appropriate medical care and thus not medically necessary under the CHAMPUS basic program.

At the conclusion of the hearing I told the attorney representing the beneficiary and his family that I found it difficult to believe additional medical records were not available on this patient, given the length of his hospital stay and the level of care he was receiving. We agreed that the mother would

sign a release and that I would contact Dr. Sykes to see if any additional records were available and the attorney would contact the hospital. In response to my inquiry Dr. Sykes told me he personally had no records and all his notes and records would be in the file at Mount Airy Psychiatric Center. Additional documentation was received from Mount Airy (Exhibit 58). As hearing officer I asked that this additional material be sent by OCHAMPUS for one more peer review to assist me in making my decision. Another peer review was conducted by a psychiatrist who had not previously reviewed this case (Exhibit 61). This reviewer's report itemizes the material used by him in the review. Some of the material such as psychiatric history, physical exam, discharge summary, etc., were requested many times during the course of processing these claims and had not been previously submitted. The reviewer found that the documentation submitted did not support the intensive level of care in a hospital setting and that the patient, after a 30 to 90 day diagnostic workup period, should receive "a less restrictive, more long-term care approach afforded by residential treatment, group or even foster family. The hospital level of care was more than was necessary in this case." He also disagreed with the diagnosis and found there was no adequate documentation of the attending physician's work. Under the CHAMPUS Law and Regulation which I have cited above, and because of the need for CHAMPUS to be fiscally accountable and provide answers both to the Department of Defense and beneficiaries to questions about quality of care delivered by civilian health professionals, it was necessary to establish some method for review and this was provided for in Chapter IV, a, 10 of the Regulation which states: "Prior to the extension of any CHAMPUS benefits under the basic benefit program as outlined in this Chapter IV, claims submitted for medical services and supplies rendered CHAMPUS beneficiaries are subject to review for quality of care and appropriate utilization." The CHAMPUS peer review project developed in relation to that need and this requirement. Because of the frequent lengths of treatment and diversity of treatment methods, it is difficult for lay people, including Hearing Officers, and fiscal intermediaries, to supply the standards or criteria by which medical/psychological necessity is determined. The American Psychiatric Association and American Psychological Association peer review projects were undertaken to assist in this determination. In the mental health field there are many different therapeutic approaches, as shown by the facts in this hearing, and this varied approach to mental health treatment makes reliance on the peer review more appropriate and important. A reading of the CHAMPUS Law and Regulation shows there is a great concern, and properly so, as to examination and evaluation of long-term inpatient acute care, whether it be medical or psychiatric, and this is is shown in the requirement for pre-authorization for long-term treatment. The CHAMPUS peer review project is essentially a mechanism in psychiatric cases to accomplish the pre-authorization for treatment beyond 30 days. which is required by the Regulation.

As Hearing Officer I am bound by the CHAMPUS Regulation regarding the need for an appropriate level of care in order for the care to be medically necessary within the CHAMPUS governing provisions. For these reasons I have discussed in detail the peer review opinions which have been rendered regarding the care provided to this beneficiary. This care has been the subject of peer review by eight different psychiatrists, all of whom found the records were inadequate and the intensive inpatient hospital care was not appropriate beyond an initial evaluation period for this patient. They all agreed that initial hospitalization was necessary, but that after this hospital evaluation, other care facilities should have been considered and would have been more

appropriate for this young man. These decisions, of course, were based on the records which were available to them and all reviewers agreed that the documentation of the care provided to this beneficiary was inadequate. I am not certain why records available at the hospital were not submitted in response to the fiscal intermediaries' requests, but I feel we have done everything possible to obtain medical records and documentation. If more detailed records were available, it is possible the peer review findings might have been different, but I must make my decision on the record as it is presently constituted. I cannot speculate as to what occurred during this lengthy hospitalization. I have carefully examined the record as it stands, and find that the decision of OCHAMPUS to allow a 45 day period of inpatient psychiatric hospitalization in order to evaluate this patient is amply supported by the record. I would note that most of the peer reviewers felt that a 30-day period would be adequate. I have examined the patient progress summaries and the patient treatment plans which were obtained from Mount Airy after the hearing, and find nothing in them which would document the need for the intense level of care as provided to this patient. There is also no discussion regarding any alternative forms of treatment as suggested by the peer reviewers, such as a residential treatment center or foster care. It is possible it would not have been appropriate for this patient to return to his home at the end of 45 days, but there are other types of care facilities for patients such as this, and there does not seem to have been any consideration of this by the hospital staff and Dr. Sykes. Dr. Rodriquez in his review said that he really questioned whether an adolescent with the types of problems presented by this patient could utilize or benefit from this long-term intense level of care and suggested that a less intense, lower level of care would have been of more benefit to him.

At the hearing the beneficiary's attorney made the argument that treatment should not be denied this young man because the diagnosis was questioned by most, if not all, of the peer reviewers. He stated the diagnosis was really only "frosting" and just because a diagnosis might be incorrect, the conclusion that everything else is incorrect is erroneous. He argued the symptoms and findings are what are important and also that, if there is a difference of opinion, the examining doctor's opinion should be given more weight than the reviewers', who did not see the patient. The basis of my recommended decision is not that CHAMPUS benefits should be denied because the attending physician may have made a wrong diagnosis. The issue of the diagnosis in this case is just one element to be considered, and I am not denying care beyond 45 days because I believe that the diagnosis was incorrect and thus everything else was incorrect too. In evaluating medical necessity and appropriate level of care as I am required to do by the Law and Regulation, one must have a starting point to evaluate the care. While I certainly understand it is possible that a diagnosis may change after hospitalization and a more complete work-up, I feel the reviewers' concern about the diagnosis is that it made it impossible for them to evaluate whether the care was appropriate. Because of the lack of medical or progress notes by the attending psychiatrist, evaluating the care was made doubly difficult by their concern regarding this diagnosis. For care to be medically necessary and appropriate, the treatment must bear some relation to the diagnosis made by the attending physician.

I also agree with Mr. [redacted], in that if there is a difference of opinion between the peer reviewers and the attending physician, I must consider the fact that the attending physician actually saw the patient and the peer reviewers did not. Although the attending physician in this case saw the

patient, his lack of documentation of his intensive five times a week psychotherapy for this young man does not allow me to override the evaluation of eight psychiatrists who examined most or all of the documentation I have available to me, even though they did not see the patient. I am aware that Dr.Sykes wrote several times to the fiscal intermediary stating in his professional opinion this patient needed to remain in an intensive inpatient setting although no underlying documentation was provided. The Regulation requires a utilization review and the peer reviewers unanimously have disagreed with him.

Another issue raised at the hearing was that Mount Airy Psychiatric Center was not a hospital in that it did not have X-ray, surgery, or many of the services provided by a general hospital. The beneficiary's mother testified that different patients were treated in a different manner. It was more like a home setting and was in effect really more a residential care or treatment center than a hospital. I find this argument to be erroneous and without merit. Although Mount Airy Psychiatric Center may differ from a general hospital, it is still an acute psychiatric facility as defined in the CHAMPUS Regulation. Chapter VI of the Regulation deals with authorized providers and a reading of that Chapter clearly shows that Mount Airy Psychiatric Center is an institutional provider and is an acute care hospital as described in Chapter VI, 4, b. Residential treatment centers are specifically covered in this same Chapter under paragraph 4, e, which provides they must be accredited by the Joint Commission on Accreditation of Hospitals under the Commission's standards for psychiatric facilities serving children or adolescents and have entered into a participation agreement with OCHAMPUS which requires that the RTC will comply with the CHAMPUS standards for psychiatric residential treatment centers serving children and adolescents. Under the CHAMPUS Regulation Mount Airy Psychiatric Center is an acute psychiatric hospital and not a residential treatment center. Ms. Udelhofen stated at the hearing that to her knowledge there are no residential treatment centers in the Denver area. This is incorrect, as there are participating residential treatment centers in the Denver area and other places in Colorado. The beneficiary's mother stated that when she inquired at the District Attorney's office regarding a residential care center, she was told the only way you could get into a residential care center was on the recommendation of a psychiatrist and they recommended she talk to Dr. Sykes. She said at no time did he recommend any other treatment facility for the patient other than Mount Airy Psychiatric Center, and at no time did she refuse to have the patient returned to his home. She said she did what was best for her son based on the recommendation of the psychiatrist.

This latter statement raises a point that I would like to address. The beneficiary's mother made a moving statement at the hearing of her son's difficulties and her attempts to obtain treatment and help for him. She testified that she never refused to take her son home; that was never discussed by the doctor whom she trusted, and she at all times followed the doctor's recommendations because she believed this was what was best for her son. She showed great concern regarding her son and the fact she followed the doctor's recommendations because she was in no position to do otherwise. In making my decision today I am not deciding whether or not she did the right thing, nor am I deciding that the care was not beneficial for her son. I cannot decide whether inpatient psychiatric care should have been provided or what should have been the the method of treatment. This is a matter between the patient and his physician and not a decision which could or should be made by me as Hearing Officer. I am only deciding whether CHAMPUS benefits will be allowed

for this care and I must follow the provisions of the CHAMPUS Law and Regulation. It was the testimony at the hearing that the care was beneficial to this patient and he was much improved upon discharge. I am certainly not disagreeing with these statements or the fact that his mother was doing what was best for her son. I, as Hearing Officer, am bound by the CHAMPUS regulatory provisions and I must use them as my standard in deciding whether the care will be paid for by CHAMPUS.

SECONDARY ISSUES

RELATED CARE

This hearing involves not only the charges for hospitalization at Mount Airy Psychiatric Center but charges of the attending psychiatrist. Chapter IV, g, of the Regulation provides specific exclusions and limitations to Champus coverage and paragraph 66 states: "All services and supplies...related to a non-covered treatment or condition." Because I have found that care after 45 days is a non-covered treatment because it was above the appropriate level and thus not medically necessary under the CHAMPUS Law and Regulation, all related care after that time, including the attending psychiatrist, is also not covered.

RETROACTIVE DENIAL OF BENEFITS ESTOPPEL

At the Hearing, both the beneficiary's mother and the representative raised the issue that it was not until March of 1982 they were advised that CHAMPUS coverage would be retroactively denied. I believe that part of the cause for this delay was because the necessary documentation had not been received by the fiscal intermediary, but whether that is true or not, the delay in notification cannot be the basis of my decision as to whether or not benefits should be allowed. A prior final decision by the Assistant Secretary of Defense (H.A.) deals with concern because of an unreasonable delay in denying claims. "The appealing party contends that OCHAMPUSEUR unreasonably delayed denial of the claims of this case. By this issue the appealing party attempts to raise the argument of estoppel against the government; however, such argument is without merit. Except for specific preauthorization cases as provided in the Regulation, CHAMPUS is an 'at risk' program whereby the beneficiary obtains care and submits an after the fact claim for processing by the government or its fiscal intermediary. A beneficiary is expected to be familiar with the Law and Regulation with regard to CHAMPUS coverage and exclusions and may not rely on the delayed response as approval of a claim. Where treatment is a personal choice of the patient, CHAMPUS claims must be allowed or denied based upon the Law and Regulation." OASD-HA 83-01

NON-AVAILABILITY STATEMENT

The beneficiary's mother testified at the hearing that when she obtained the non-availability statement (Form 1251) from Fitzsimmons Army Medical Center, it was her understanding this meant CHAMPUS would cost-share 75 percent of the charges for the patient's care. This is unfortunate, because the statement itself makes it clear this is not true. The form states: "The issuance of this statement means; (3) If you receive medical care from civilian sources and it is determined that all or part of the care is not authorized under the CHAMPUS, the government will not pay for the unauthorized care (emphasis theirs). The determination of whether medical care you may receive from

civilian sources is authorized for payment cannot be made at this time because this determination depends among other things upon the care you actually receive. Further, no statement regarding your condition or diagnosis made hereon will be considered in any way determinative as to whether care rendered for such condition is payable by CHAMPUS." Counsel stated at the hearing that at the time this statement was issued CHAMPUS knew the patient was going to enter Mount Airy Psychiatric Center and no objection was raised. This argument cannot be determinative of my decision because I think careful consideration of this position would show it is not appropriate for the person issuing the non-availability statement to decide at that time whether or not benefits will be paid or whether the care which is being considered is reimbursable. My discussion above shows CHAMPUS is an at risk program and I believe the nonavailability statement makes that very clear.

BURDEN OF PROOF

A decision on a CHAMPUS claim or 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 the initial adverse decision. I have concluded the appealing party has not met this burden. There is not adequate documentation in the file to show that after 45 days the patient could not have been treated at a less intense level of care.

SUMMARY

It is the recommended decision of the Hearing Officer that inpatient hospitalization and related medical care from December 3, 1981 through January 16, 1982 be cost-shared by CHAMPUS after the primary coverage has been exhausted, but hospitalization and related medical care after that date until discharge on August 29, 1982 should be denied as it was above the appropriate level of care and thus not medically necessary under the CHAMPUS Regulation.

Hanna M. Warren

HANNA M. WARREN
Hearing Officer