



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

JAN 3 1985

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) File 84-38
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-38 pursuant to 10 U.S.C. 1071-1092 and DoD 6010.8-R, chapter X. The beneficiary is the 13-year-old son of an active duty officer in the United States Army.

The appeal involves the denial of CHAMPUS cost-sharing of inpatient psychiatric care in excess of 60 days during Calendar Year 1983. Appealing the denial of CHAMPUS coverage are the participating providers, Ridgeway Hospital, Chicago, Illinois, and Sonia Yballe, M.D. The amount in dispute involves billed charges of \$1,820.00 (less patient cost-share) representing hospital charges of \$290.00 per day from September 10, 1983, through September 15, 1983, and \$80.00 for the individual psychotherapy session on September 14, 1983. The hearing was held on the record at the request of the appealing parties, without appearance or representation at the hearing.

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 beneficiary's initial 60-day (i.e., July 11, 1983, through September 9, 1983) acute inpatient psychiatric hospitalization be allowed as medically necessary and appropriate care; however, CHAMPUS cost-sharing for continued acute inpatient psychiatric hospitalization, as well as related care including inpatient psychotherapy by Dr. Yballe, beyond the initial 60 days (i.e., September 10, 1983, through September 15, 1983) should be denied as (1) care above the appropriate level required to be medically necessary and (2) because the beneficiary did not meet the requirements for waiver of the 60-day calendar limitation for inpatient psychiatric care established by the Department of Defense Appropriations Act for 1973, as implemented by CHAMPUS policy. The Hearing Officer found that the medical record was silent as to any medical complication of the beneficiary which would require acute inpatient psychiatric hospitalization beyond

the initial 60-day confinement. In addition, the Hearing Officer found that the medical records supported the medical review opinions that the beneficiary could have been treated after the initial 60-day period of hospitalization on an outpatient basis or at least at a lower level of care. Finally, the Hearing Officer found that the record did not establish that the beneficiary was suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which resulted in his being a significant danger to himself or others at or around the 60th day of hospitalization.

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, concurs in the recommendation of the Hearing Officer and hereby adopts and incorporates by reference the Recommended Decision of the Hearing Officer as the FINAL DECISION.

In my review, I find the Recommended Decision adequately states and analyzes the issues, applicable authorities, and evidence in this appeal. The findings are fully supported by the Recommended Decision and the appeal record. Additional factual and legal analysis 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 affirm CHAMPUS cost-sharing of the beneficiary's first 60 days of inpatient psychiatric care during Calendar Year 1983 at Ridgeway Hospital and to deny a waiver of the Department of Defense Appropriations Act's 60-day limit for the beneficiary's extended hospitalization beyond 60 days. This decision is based upon (1) the finding the beneficiary was not suffering from an acute mental disorder which resulted in the beneficiary being a significant danger or risk to himself or others at or around the 60th day of hospitalization, and (2) the finding the beneficiary did not require the type, level, and intensity of services that could be provided only in an acute inpatient setting. Documentation in the appeal file did not establish the extraordinary circumstances exhibiting medical or psychological necessity for inpatient mental health care in excess of 60 days during Calendar Year 1983. It is also my determination that the beneficiary's inpatient psychiatric care beyond the initial 60-day period was above the appropriate level of care and excluded from CHAMPUS cost-sharing. This determination is based on a finding that the beneficiary did not require the type, level, and intensity of services that could only be provided in an acute psychiatric hospital but could have been treated on an outpatient basis or at least at a lower level of care; e.g., a residential treatment center. As I have found inpatient care beyond 60 days is not authorized for CHAMPUS coverage, I also find that all services, including inpatient

individual psychotherapy, related to inpatient care in excess of 60 days are excluded from CHAMPUS cost-sharing. Therefore, the request for waiver of the 60-day inpatient limitation, the claims for inpatient psychiatric care beyond 60 days in Calendar Year 1983, and the appeal of the participating providers are all denied. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.

 William Mayer, M.D.

## RECOMMENDED HEARING DECISION

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

Beneficiary:

Sponsor: Colonel  
SSN:

This is the recommended decision of CHAMPUS Hearing Officer Hanna M. Warren in the CHAMPUS appeal case file \_\_\_\_\_ and is authorized pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, Chapter X. The appealing parties are Ridgeway Hospital, Chicago, Illinois and Sonia Yballe, M.D., the treating physician. The appeal involves the denial of CHAMPUS cost-sharing for inpatient hospitalization and related care from September 10 through September 15, 1983. The amount in dispute is approximately \$1,820.00.

The hearing file of record has been reviewed. It is the OCHAMPUS position that the Formal Review Decision, issued December 23, 1983, denying CHAMPUS cost-sharing for six days of inpatient psychiatric care be upheld on the basis that the CHAMPUS law excludes inpatient psychiatric care beyond 60 days unless the criteria set out in Volume I, Chapter 1, Section 2, page 11.1.1 of the CHAMPUS Policy Manual are met, which they were not in this appeal.

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 beneficiary's inpatient psychiatric hospitalization at Ridgeway Hospital and all related care in connection therewith from the period September 10 through September 15, 1983.

#### FACTUAL BACKGROUND

This thirteen year old beneficiary was admitted to Ridgeway Hospital for inpatient psychiatric care on July 11, 1983 and discharged September 15, 1983. Charges for hospitalization at \$290.00 per day were submitted by Ridgeway Hospital and also charges for drugs, X-ray and laboratory services. The diagnosis given was major depression. A statement was also submitted by Sonia Yballe, M.D., for an admitting examination on July 11, 1983 at \$100.00 and five sessions of inpatient psychotherapy per week at a charge of \$500.00 for every week from July 11 through September 9, 1983. Inpatient psychotherapy for 45 minutes was billed on September 14 in the amount of \$80.00 (Exhibit 1, page 3 and 4). It appears the fiscal intermediary, Blue Cross/Blue Shield of Rhode Island, allowed all of the charges of Dr. Yballe (Exhibit 2, page 1 and 2). What payments were made to the hospital is unclear from the record, but since the request for hearing referred only to the last six days of hospitalization I will assume that payment of all the hospital charges was made except for the last six days at \$290.00 per day.

A request for extended hospitalization benefits was submitted on July 20, 1983, and again on July 25, 1983 (Exhibits 3 and 4). A letter was then sent to Major advising him that the request for waiver of the 60 day calendar year limitation on inpatient hospital psychiatric care could not be accepted by OCHAMPUS because the required information was not included with the request (Exhibit 5). A letter was also sent to Ridgeway Hospital requesting additional information (Exhibit 6). Medical records and a letter from Dr. Yballe were then received from the hospital and sent to the American Psychiatric Association for peer review concerning the OCHAMPUS program waiver request. The first reviewer (Exhibit 8, page 1 through 8) found that the record showed improvement from July 12 onward, with better controls and less depression, "dangerousness not present". This reviewer apparently felt that the primary basis for the request for extension related to physical violent behavior toward mother but there was little or no information in the record regarding the family sessions or much discussion of the actions or feelings during the contacts the patient had with his mother, such as when he was on passes. The reviewer found no further inpatient care was warranted and that some type of living arrangement separate from mother with continuation of individual and family sessions "would have been possible and adequate alternatives" to inpatient hospital setting. The reviewer concluded "further inpatient care not warranted", but did feel that the initial period of hospitalization was adequate and appropriate medical care for a good diagnostic evaluation and treatment, "but patient showed appreciable gains especially after fourth week in hospital".

The second reviewer found no evidence that patient was a significant risk to self or others stating "behavior not described as dangerous, but has been cooperative since approximately two weeks earlier and getting along in family sessions with mother" (Exhibit 8, page 9).. This reviewer also found the inpatient setting was not necessary and that further treatment, probably in family sessions, was appropriate and necessary but could have been provided in an outpatient setting or as part of a residential treatment program. This reviewer, as did the first reviewer, found no medical condition which would require continued inpatient setting. He also stated "symptoms of depression were never strong (biologically) but rather appeared to be related to confinement against his will, which he learned to adjust to and overcome." The reviewer found that the first 60 days of inpatient care were necessary and effective in stabilizing the patient but concluded "no further days are warranted, although the inpatient therapists have a strong motivation to continue treatment in this setting. They could well provide treatment handily but costs of inpatient care are not warranted when treatment could likewise be offered at less cost" (page 14).

On the basis of the opinion of the peer reviewers, OCHAMPUS denied inpatient psychiatric benefits beyond the 60-day per calendar year limitation (Exhibit 9). Dr. Yballe then wrote asking that the patient's hospitalization be extended beyond the 60 day limit (Exhibit 10). By this time, of course, the patient had been discharged and she was requesting additional benefits after the 60 day limit until September 15, 1983, the date of discharge. She states that the patient had progressed "but with every family conference demonstration of aggressive behavior toward his mother is apparent that active staff intervention is necessary." She described the hospital course of stay as

follows: " was admitted because of decreasing depression manifested by withdrawal, negative behavior, physical altercation with mother and crying spells. At first he was negative about his hospitalization and did not know how to utilize the treatment program. He then got integrated, became very active in groups; family therapy was difficult with periods of very intense confrontations with mother, but this eventually became very productive, opened communications between and his mother which allowed an honest exploration of his feelings." Dr. Yballe stated in this letter that the mother would be seen in intensive psychotherapy two times weekly and the family therapy would be continued, "To prepare and deal with his mother without staff support, as well as for Mrs. to work through her transference relationships with ." Her last two points were that, "The conflict between Mrs. and her son has reached a point where an intermediary is necessary to prevent physical altercation between mother and son" and "at the date of the waiver request, anger toward his mother is still very much expressed in physical aggression rather than verbal confrontation." This letter was treated as a review request by OCHAMPUS and a formal review decision was issued on December 23, 1983 approving CHAMPUS cost-sharing for the inpatient psychiatric hospitalization and related care from July 11 through September 9, 1983, but denying benefits from September 10 through 15, or beyond the 60th day of inpatient care.

Before the formal review decision the medical records and correspondence were reviewed by the OCHAMPUS Medical Director who is a child psychiatrist (Exhibit 12). He stated that "the patient was admitted to the facility on July 11, 1983 for aggressive behavior, poor impulse control related to separation by his parents, subsequent tendency to withdraw, enraged, moody, irritable, some difficulty in expressing feelings verbally toward significant persons, such as his mother, without becoming enraged, hostile and physically threatening. Upon admission, the patient was diagnosed as having a major depression, recurrent type and a conduct disorder...even though the major diagnosis was depression, there was no consideration of medication," with the treatment approach being that of individual psychotherapy. The Medical Director found the patient had few signs and symptoms of a major depressive disorder although he was in a significant rage over the breakup of his parents with difficulty in expressing himself. "Within a few weeks of hospitalization, the patient began to display an increasing ability to relate verbally, to control his impulses, to act more appropriately and more relaxed in family, group and individual therapy sessions. Beginning in the third week of August, the medical records began to indicate the beneficiary was much more relaxed, appropriate, demonstrated much better ability to control his impulses in family sessions and other kinds of stressful situations." As to the treating doctor's statement that the patient was a significant risk to himself or others or that "with every family conference, demonstration of aggressive behavior towards his mother is apparent", the medical director stated: "There is absolutely no justification of that in the record, and if anything, the opposite was true. With every family conference, the patient demonstrated significant non-aggressive behavior and the ability to verbalize his feelings in a more age appropriate and socially appropriate way." Dr. Rodriguez also found no medical complications which would justify continued care beyond the 60 day limit and that the patient could have been treated on an outpatient basis if it was the determination that treatment needed to continue.

Dr. Yballe again wrote to OCHAMPUS expressing her opinion that outpatient treatment would not have been adequate and continued inpatient hospitalization was necessary for the six days which had been denied. She also requested an appeal (Exhibit 14). The request for a hearing was accepted by OCHAMPUS by letter dated February 7, 1984 (Exhibit 15). Dr. Yballe for herself and the hospital waived the right to appear at a hearing (Exhibit 16). OCHAMPUS attempted several times to contact Mr. (Exhibit 17 and 18) but never received any response from him. I also wrote to the sponsor (Exhibit 22) and my letter eventually was forwarded to him. Upon receiving his letter (Exhibit 23) I contacted Ms. Udelhofen at OCHAMPUS and the hearing file was sent to his new address. I also wrote to Colonel and gave him an opportunity to respond (Exhibit 24) but no response was received by me.

#### ISSUES AND FINDINGS OF FACT

The primary issue in dispute is whether the care provided during the last six days of the beneficiary's inpatient psychiatric hospitalization met the criteria for coverage beyond the 60 day per patient, per year limitation for inpatient mental health services under the CHAMPUS basic program. Secondary issues that will be addressed are related care and burden of evidence.

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 describes 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 from the CHAMPUS Basic Program:

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

Chapter IV.A.10. provides in pertinent part as follows: "Utilization review: Quality Assurance. Prior to the extension of any CHAMPUS benefits under the basic benefits 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, 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 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...."

Section 785 of the Defense Appropriations Act for fiscal year 1983 provides that funds cannot be used to pay claims for inpatient mental health services provided under the CHAMPUS basic program in excess of 60 days per patient per year. This limitation does not apply to inpatient mental health services (a) provided under the program for the handicapped; (b) provided as residential treatment care; (c) provided as partial hospital care; (d) provided to

individual patients admitted prior to January 1, 1983 for so long as they remain continuously in inpatient status for medical or psychological reasons; or (e) provided pursuant to a waiver for medical or psychological necessities granted in accordance with the findings of current peer review as proscribed in guidelines established and promulgated by the OCHAMPUS Director.

Volume 1, Chapter 1, Section 11, page 11.1.1 of the CHAMPUS Policy Manual sets out the guidelines established by the OCHAMPUS Director for the granting of coverage in excess of 60 days of inpatient mental health services in a calendar year and states that an extension will be granted only if the Director finds that;

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

(2) The patient has medical complications; and the patient requires the type, level and intensity of service that can only be provided in an inpatient hospital setting.

The provider requested a waiver from the 60 day per patient per year maximum benefit provisions of the Act for medical or psychological necessities pursuant to (e) above which was denied. The policy guidelines above allow a waiver for medical complications. I do not believe this was the basis for the waiver request, nor could it be. The record is completely silent as to any strictly medical complications of this young man, and certainly any that would require an inpatient hospital setting. The physical examination (Exhibit 7, page 4) is normal as are the laboratory reports (Exhibit 7, page 5 through 9), and X-ray report (page 10). The physician's orders show the only medication given during the period in issue was "Eryderm lotion to face" (Exhibit 7, page 11 through 18).

The basis, then, for a waiver of the 60 day inpatient psychiatric care limit must be that the patient was suffering from an acute mental disorder which resulted in the patient being a significant danger to himself and others, requiring the type and level of care provided in an inpatient hospital setting. At the time of requesting the hearing, Dr. Yballe wrote regarding this patient (Exhibit 14). The letter was written in January 1984 but she states that at the end of 60 days of hospitalization, "The patient was suffering an exacerbation of a chronic mental disorder which made him a significant danger towards his mother... The patient's changes in his capacity to control his rages were so erratic even after the 60th day of hospitalization, that he needed a controlled environment. Around the 60th day of hospitalization, the patient still demonstrated aggressive outbursts toward his mother that family conferences had to be diluted by having another staff member along with the family therapist to help control the situation and prevent from physically attacking his mother." (Exhibit 14).

At the time of the patient's admission to Ridgeway Hospital a social history was taken and this is contained in Exhibit 7, page 19. The patient was described as having a bad temper and several times he and his mother "have come

to blows." The report states that the last time hit his mother was two years prior to admission. The mother feels somewhat that she is losing control and has on occasion hit the patient. Both were seeing a psychologist for family treatment and the mother became afraid at the patient's request to purchase a knife. The psychologist recommended hospitalization at that point. The report summary states: "The patient and his mother seem to have developed a behavioral pattern of ex-wife and husband, a pattern which has proved destructive for the entire family system. The patient's depression stems from unresolved anger and guilt towards his parents and the never-ending negative aspects of his parents' relationship which are perpetuated through his relationship with his mother." Recommendations were group and individual counseling along with a strong recommendation for family treatment.

A psychological evaluation was also performed at the time of the beneficiary's admission to the hospital Exhibit 7, pages 2 and 3). The diagnostic impression as a result of this evaluation was Dysthymic disorder/identity disorder. The summary and recommendations are as follows: "This thirteen year old non-psychotic boy of overall above average intelligence is currently experiencing mild to moderate degrees of depression; currently, he overemphasizes a withholding, introspective and ruminative style the primary topic of which is the experience and expression of his angry impulses. The risk of self harm here is presently judged to be at a mild level only. Verbal intervention should focus upon his feelings of anger regarding the parental divorce and the acquisition of more appropriate and effective means of expressing his anger and frustration. Concurrent family therapy should be encouraged in order that his conflicts with his mother may be reduced."

In examining the medical records, it appears an uneventful family session was held on July 19, 1983 (Exhibit 7, page 52). A second conference was held on July 28, 1983 (Exhibit 7, page 60). The notes regarding this conference refer to patient's "angry affect and hostile comments" and the reasons for them. There is a discussion of Mother's behavior after the patient was excused, but no violent behavior is reported. The staffing report one day later does relate that "family sessions are suspended until such time as patient can control his angry outbursts and begin to deal with some of the feelings of hurt and abandonment." The progress note of August 5, 1983 (Exhibit 7, page 31) shows the patient was "constantly asking for his family sessions" and the social work notes of same date states "The physician suggested that the patient's resistance might be waning--partially due to the temporary suspending of family treatment." The progress notes of Dr. Yballe on August 10, 1983 show that the family conferences were to be instituted the next week and that the patient was quite pleased about that. Along about this time the progress notes show an improved attitude towards the entire treatment program along with an improvement in his depressed mood. The progress notes on the 17th state that he is beginning to feel positive about his mother and "they are beginning to set rules for when he goes home. Relaxed and pleasant attitude." The psychotherapy progress notes for this period state the patient is "showing significant improvement in his ability to talk about his angry feelings rather than act them out immediately and impulsively." The progress notes on August 26, 1983 show "marked improvement in affect and insight, getting along well with mother and staff, relations with peers also improved, family treatment to

continue." (Exhibit 7, page 92). The notes for the 27th of August state "much improved family sessions, went very well. Affect much improved." (Exhibit 7, page 94). There is no further medical documentation past this date.

The CHAMPUS Appropriations Acts and the CHAMPUS Regulations issued pursuant to statute have always contained specific requirements which must be met for CHAMPUS cost-sharing and I think it is appropriate to characterize these as restrictions on coverage. Many of these restrictions have applied when there was any long-term hospitalization and/or medical treatment. Because this was frequently the case in psychiatric care many of these specific restrictions were contained in the psychiatric coverage portion of the Regulation and provided for peer review to determinate the appropriateness and medical necessity of the care provided. The 1983 Defense Appropriations Act created an even more specific psychiatric limitation which is applicable to this hearing, and that is that funds cannot be used for inpatient mental health services in excess of 60 days per patient per year unless certain specific conditions are present which remove the care from this limitation. The only condition which would be applicable to this hearing is subparagraph (e) "provided pursuant to a waiver for medical or psychological necessities granted in accordance with the findings of current peer review as proscribed in guidelines established and promulgated by the OCHAMPUS Director." These guidelines are quoted above and provide two bases for an extension beyond the 60 days limitation mandated by the Appropriations Act. The exception bears repeating: "A patient is suffering from an acute mental disorder or acute exacerbation of chronic mental disorder which results in the patient being in significant danger to self or other, and the patient requires the type, level and intensity of service that can only be provided in an inpatient hospital setting."

A previous Final Decision by the Assistant Secretary of Defense for Health Affairs, OASD (HA83-54) has been issued concerning Section 785 of the Defense Appropriations Act of 1983 (Public Law 97-377, 96 STAT 1830). After quoting the provisions of the statute, the opinion continues: "In drafting the required guidelines, the language of Senate Report No. 97-580 concerning Public Law 97-377 was considered. The Committee on Appropriations noted that the Act's 60-day limit is the same as the Blue Cross/Blue Shield High Option insurance plan for federal employees after which CHAMPUS was originally patterned. In further comment, the Committee stated:

'The Committee recommends Bill language limiting the length of inpatient psychiatric care to 60 days annually, except when the Director of OCHAMPUS or a designee waives the limit due to extraordinary circumstances.' (Emphasis added. Senate Report 97-580, page 30).'

"Prior to enactment of Public Law 97-377, CHAMPUS limited cost-sharing of inpatient mental health services only under concepts of medical necessity and appropriate level of care. The intent of the funding limitation in Public Law 97-377 was clearly to impose additional restrictions on CHAMPUS coverage. Therefore, the CHAMPUS implementing guidelines were based on the Senate Report language of 'extraordinary circumstances' for interpretation of the phrase 'medical or psychological necessity' on which Public Law 97-377 conditioned the granting of a waiver of the 60-day coverage limitation."

A second Final Decision regarding inpatient psychiatric care in excess of 60 days has also been issued by the Assistant Secretary of Defense Health Affairs. OASD (HA 84-14). This Final Decision reaffirms the necessity to establish extraordinary circumstances exhibiting medical or psychological necessity for inpatient mental health care in excess of 60 days during calendar year 1983.

The first peer reviewer specifically found "Dangerousness not present" and that the primary basis for the request for extension was the alleged physically violent behavior of the patient towards his mother. The reviewer found little or no information regarding this issue such as during the family sessions or when the patient was on pass. The second reviewer pointed out that the record indicated to him the patient had been getting along in family sessions with his mother. Both of the reviewers found the inpatient level of care was no longer necessary for this young man and he could have been treated in an outpatient setting or residential treatment center.

Dr. Rodriguez also found that the patient had few signs and symptoms of a major depressive disorder, although he "was in a significant rage over the breakup of his parents with difficulty in expressing himself." This improved within a few weeks of hospitalization and the medical records indicate by the third week of August the patient was better able to control his impulses in family sessions and other kinds of stressful situations.

When one is deciding questions of appropriate care rendered in a previous time period, one must rely on the medical documentation. Although in her letters Dr. Yballe expresses concerns regarding this patient and his relationship with his mother and his dangerous hostility towards her, it is not documented in the records. The initial psychological evaluation described the patient with mild to moderate depression and some expression of angry impulses. Even at the beginning of his hospitalization this report stated, "The risk of self-harm here is presently judged to be on a mild level only." One of the goals of treatment was to show a more appropriate, effective means of expressing his anger and frustration and the report recommended concurrent family therapy. By the 10th of August the chart notes show an improvement in the patient's condition and although the family sessions were interrupted for several weeks, the record indicates it was possibly more a treatment technique than because of concern regarding violence. It also allowed the mother to start treatment and deal with her transference before family therapy continued. There are no notes showing any concern for physical violence and by the last entry on August 26th, it was noted the patient was doing well with mother and staff.

I have considered Dr. Yballe's letters written to the fiscal intermediary for purposes of appeal and her argument that she felt the patient was a significant danger to his mother and conclude that the medical records maintained contemporaneously with the hospital care do not support this position. All of the psychiatrists who reviewed the medical records agreed that the beneficiary needed the initial period of hospitalization, but that after the initial 60 day period he could have been treated on an outpatient basis or at least at a lower level of care. I agree with their assessment and find it supported by the medical records. The policy guidelines are clear and there is nothing in the record to show extraordinary circumstances for which continued intensive inpatient psychiatric hospitalization was required. It is not documented that

the beneficiary was suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which resulted in his being a significant danger to himself or others at or around the 60th day of hospitalization.

## SECONDARY ISSUES

### RELATED CARE

This hearing involves not only the charges for inpatient psychiatric hospitalization but charges of the attending psychiatrist, Dr. Chapter IV.G. of the Regulation provides specific exclusions and limitations to CHAMPUS coverage and in paragraph 66 excludes "all services and supplies related to a non-covered treatment or condition." Because I have found that the hospitalization beyond September 9, 1983 did not meet the CHAMPUS requirements for coverage, all related care in connection therewith, including the inpatient daily psychotherapy provided by the attending psychiatrist after September 9, 1983, is also not covered.

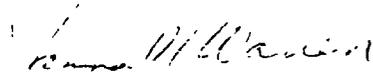
### BURDEN OF EVIDENCE

A 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 or she can to overcome the initial adverse decision. I have concluded the appealing parties have failed to meet their burden as the Appropriations Act providing a 60-day limitation for inpatient psychiatric hospitalization is specific, as are the policy guidelines issued pursuant to said legislation. There is no evidence that has been presented to show as of September 10th the patient was suffering from an acute mental disorder which resulted in his being a significant danger to himself or others and requiring the level and intensity of services that could only be provided in an inpatient hospital setting. Although continued hospitalization may have been the treatment of choice between the patient's family and the treating physician, the CHAMPUS requirements are specific and they have not been met.

### SUMMARY

It is my recommended decision that the inpatient psychiatric hospitalization and psychotherapy rendered to the beneficiary from July 11, 1983 through September 9, 1983 be allowed, but that the care from September 10 through discharge on September 15, 1983 be denied as above the appropriate level of care required to be medically necessary and further specifically excluded under Section 785 of the Defense Appropriations Act for 1973 and the CHAMPUS policy manual, Vol. I, Chapter I, Section 2, page 11.1.1.

Dated this 7<sup>th</sup> day of July, 1984.

  
HANNA M. WARREN  
Hearing Officer