ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

HEALTH AFFAIRS

JAN 28 1985

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) File 84-39
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-39 pursuant to 10 U.S.C. §§1071-1092 and DoD 6010.8-R, chapter X. The appealing party is the CHAMPUS beneficiary who was represented by counsel. The beneficiary is a dependent of , an active duty Petty Officer in the United States Navy. The appeal involves a denial of CHAMPUS cost-sharing for hospitalization at College Hospital, Cerritos, California, from August 20, 1982, through November 14, 1982. The amount in dispute is $41,288.00.

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 the hospitalization from August 20, 1982, through November 14, 1982, be denied because the hospitalization was not medically necessary and was above the appropriate level of care. Further, the Hearing Officer found that the inpatient hospitalization was pursuant to a court order directing hospital admission in lieu of incarceration for the conviction of a criminal offense.

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

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to deny CHAMPUS cost-sharing of the appealing party's claims for inpatient hospitalization at College Hospital from August 20, 1982, through November 14, 1982. This determination is based on findings that: (1) the beneficiary did not require inpatient hospitalization at the time of his admission on August 20, 1982; (2) the beneficiary did not require

the type, level, and intensity of services that could only be provided in an inpatient hospital setting (the treatment could have been rendered appropriately on an outpatient basis); and (3) the beneficiary's inpatient hospitalization was a result of a court-ordered hospital admission in lieu of incarceration for the conviction of a criminal offense.

FACTUAL BACKGROUND

The beneficiary, the dependent of an active duty United States Navy Petty Officer, was committed to College Hospital as a result of a criminal conviction by the Superior Court of the State of California, County of Orange, sitting as Juvenile Court. The Hearing Officer's Recommended Decision describes in detail the beneficiary's medical condition, the events leading to the court-ordered hospitalization, and the course of the hospitalization. Because the Hearing Officer adequately discussed the factual record, it would be unduly repetitive to summarize the record, and it is accepted in full in this FINAL DECISION. The Hearing Officer has provided a detailed summary of the factual background, including the appeals that were made and the previous denials, and the medical opinion of the OCHAMPUS Medical Director.

The hearing was held on July 6, 1984, at San Diego, California, before OCHAMPUS Hearing Officer, Edward S. Finkelstein. Present at the hearing were Samuel D. Osowski, Esquire, attorney for the beneficiary, and the CHAMPUS representative. The Hearing Officer has issued his Recommended Decision and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issue in this appeal is whether the court-ordered inpatient care provided from August 20, 1982, through November 14, 1982, was medically necessary treatment and provided at the appropriate level of care.

The Hearing Officer, in his Recommended Decision, correctly stated the issue and correctly referenced the applicable law and regulations.

The Hearing Officer found that:

> "1. The beneficiary did not require inpatient hospitalization at the time of his admission on August 20, 1982, to College Hospital.
>
> "2. The beneficiary did not require the type, level, and intensity of services that could only be provided in an inpatient hospital setting, that treatment could have been rendered appropriately on an outpatient basis.

"3. The beneficiary's inpatient hospitalization was directly as a result of a court order directing hospital admission in lieu of incarceration for the conviction of a criminal offense which services are specifically excluded by CHAMPUS Regulation."

The Hearing Officer recommended that the entire inpatient hospitalization provided the beneficiary from August 20, 1982, through November 14, 1982, be denied on the basis that the hospitalization was not medically necessary and was above the appropriate level of care and that the inpatient hospitalization was pursuant to a court order directing hospital admission in lieu of incarceration for the conviction of a criminal offense. The Hearing Officer also recommended that OCHAMPUS should review the file to determine if recoupment is appropriate for the erroneous payments made for the first 22 days of the beneficiary's inpatient hospitalization.

I concur in the Hearing Officer's findings and recommendations. I hereby adopt in full the Hearing Officer's Recommended Decision, including the findings and recommendations, as the FINAL DECISION in this appeal.

ADMINISTRATIVE CORRECTION

I note on page 1, second paragraph, of the Recommended Decision that the Hearing Officer has stated that the appealing party is the provider, College Hospital. That is corrected to read, "The appealing party is the beneficiary as represented by his attorney, Samuel D. Osowski, Esq."

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to deny CHAMPUS cost-sharing of the hospitalization from August 20, 1982, through November 14, 1982, because the hospitalization was not medically necessary and was above the appropriate level of care and that the hospitalization was pursuant to a court order directing hospital admission in lieu of incarceration for the conviction of a criminal offense. Because I have found the entire period of hospitalization to be a noncovered service, the Director, OCHAMPUS, is directed to review this case for appropriate recoupment action in accordance with the Federal Claims Collection Act. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.

Vernon McKenzie
Acting Principal Deputy Assistant Secretary

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

(Name of Beneficiary)

(Name of Sponsor) (Sponsor's SSN:)

This case is before the undersigned Hearing Officer pursuant to the Beneficiary's request for hearing on the OCHAMPUS Formal Review Decision dated December 28, 1983. The Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) has granted the Beneficiary's request for a hearing. This hearing was held at the General Services Administration, 880 Front Street, San Diego, California at 9:00 A.M. on July 6, 1984, pursuant to Regulation DoD 6010.8-R, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Chapter X, "Appeal and Hearing Procedures". At the hearing, the Beneficiary was not present in person but was represented by his attorney, Samuel D. Osowski, Esq., and OCHAMPUS was represented by Gary Fahlstedt, Attorney/Advisor.

This is the Recommended Decision of CHAMPUS Hearing Officer, Edward S. Finkelstein, 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 party is the Provider, College Hospital, 10802 College Place, Cerritos, California. The sponsor is the father of , an active duty Navy Petty Officer.

Initially, a total of seven claims were submitted by College Hospital along with additional claims by the psychologist and two psychiatrists who had provided treatment to the beneficiary during his inpatient hospitalization from August 20, 1982 to November 14, 1982. The total of these claims was approximately $41,288.00. The initial fiscal intermediary, Blue Cross of California, cost-shared all claims submitted for inpatient hospitalization from August 20, 1982 to September 11, 1982 and denied the hospital's claim for the period from September 11-November 11, 1982. College Hospital by letter dated February 11, 1983 requested an Informal Review of the denial. The new fiscal intermediary, Blue Cross of Washington-Alaska on March 22,

1983, after a peer review by the American Psychiatric Association, issued an Informal Review approving only the first twenty-two days of hospitalization and denying benefits for inpatient hospitalization after the twenty-second day (September 11, 1982), as not being medically necessary. On April 12, 1983 an automatic Reconsideration decision was issued upholding the Informal Review decision denying benefits for inpatient hospitalization after the twenty-second day.

The psychologist and attending psychiatrist by letter dated May 25, 1983 requested an OCHAMPUS Formal Review. OCHAMPUS obtained additional inpatient records of hospitalization and obtained another peer review by the OCHAMPUS Medical Director, a board-certified child psychiatrist. Based on the results of the peer review, the Formal Review Decision issued on December 28, 1983 held that the entire inpatient hospitalization had not been medically necessary and was above the appropriate level of care.

The hearing file of record, the tape of oral testimony and the argument presented at the hearing have been reviewed. It is the OCHAMPUS Position that the Formal Review Determination, issued December 28, 1983, denying CHAMPUS cost-sharing for the entire inpatient hospitalization be upheld on the basis that inpatient hospitalization was not medically necessary and was above the appropriate level of care. OCHAMPUS also directed the fiscal intermediary to recoup payments erroneously made for care provided during the first twenty-two days of inpatient hospitalization. This results in an amount in dispute of approximately $41,000.00.

FACTUAL BACKGROUND

The beneficiary, , who was a 17-year old male at the time the services in question were rendered, is the son of an active duty Navy Petty Officer. The admission to College Hospital on August 20, 1982 was by court order following the patient's conviction of sexual assault on a 7-year old girl. (Ex. 13, p. 3) The court ordered 120 days of hospitalization, less 36 days previously served, for a total of 84 days. By the time he was discharged on November 14, 1982, the beneficiary had been hospitalized for 87 days.

Upon review of the court order dated August 13, 1982 (Ex. 13) it states that "minor committed to a treatment facility for 120 days; said commitment stayed until 8/20/82; credit for 36 days served. Minor will receive day for day credit for any time spent in a hospital facility."

The court does not specify in the court order why they

felt the beneficiary had to be commited to a treatment facility in lieu of incarceration. Attorney Osowski at the hearing stated that it was his understanding that the court relied on a psychological evaluation done of the beneficiary at the time he was sentenced. However, he had not been able to obtain a copy of that psychological report in time for the hearing. The Hearing Officer gave him an additional two weeks from the date of the hearing to obtain the report but the Hearing Officer has never received it. Attorney Osowski telephoned the Hearing Officer after the hearing to tell the Hearing Officer that he was obtaining this report. Prior to completing this Recommended Decision, the Hearing Officer telephoned Attorney Osowski to see where the report was and Attorney Osowski indicated that he had just received the report but that there was nothing in the report regarding a diagnosis of the beneficiary and, therefore, it would not be submitted as evidence in this matter. Therefore, there is no documentation in the record of this case as to why the beneficiary was admitted to a treatment facility instead of being incarcerated.

Upon admission, the beneficiary's physical examination was within normal limits except for a recent weight gain. (Ex. 11, p. 53) His chief complaint upon admission was "The court sent me here." (Ex. 11, p. 55). The admission report states in part:

> "Affect appropriate. Sensorium oriented to time, place and person. Good spatial orientation, alert no clouding of consciousness. Perceptions. No delusions, no hallucinations, no perceptual distortions, no visual motor performances. . . . Mental content reports of sadness and confusion present with feelings of anxiety. Insight is good, judgement is good." (Ex. 11, pp. 59 & 60)

The admitting diagnoses included Dysthymic Disorder, moderate (300.40); Pedophilia (by court history) (302.20) vs. Atypical psychosexual dysfunction. Rule out malingering (differential diagnosis). Mixed specific development disorder (302.70). (Ex. 11, p. 60)

The proposed treatment consisted of psychotherapy and milieu therapy and the long term goals were to observe for pathologic behaviors, relieve anxiety and depression, elicit emotional arousal, resolve old pathologic patterns, provide media for experimental and cognitive learning and solidify a therapeutic relationship. (Ex. 11, p. 60)

A psychological testing report dated September 13, 1982

performed by Karol A. Bailey, Ph.D., the beneficiary's psychologist throughout his hospitalization, stated that the beneficiary was very hyperdefensive and his test-taking attitude was typical for someone who was being detained/treated against his will. It is recommended in the report that in order to reach the beneficiary it would require a strong and consistent confrontation if the anxious, angry and depressed part of him is to be reached. Concrete goals would have to be set by the therapy team and he would need constant coaching in addition to desired awards made contingent on goal attainment. Due to the strength of his defenses this would be a difficult task. (Ex. 11, p. 50)

In a letter dated May 23, 1983 to OCHAMPUS, Dr. Bailey and Dr. Monteleone, in an attempt to substantiate the medical necessity of inpatient hospitalization for the beneficiary at the time of his admission, stated:

> "Regardless of his guilt or innocence, came to us in an extremely psychologically maladaptive state.
>
> "Upon admission, was alienated and depressed. In response to the charges against him, felt his world had fallen apart. long-standing coping mechanisms were repression and denial. (These mechanisms were severe enough that they were identified as the source of his learning disabilities.) He used these defenses to such a degree that upon his admission, he was immobilized." (Ex. 8)

Upon review of the admission report the Hearing Officer found no documentation to confirm the above. To the contrary, it is reported on the Physical Examination Report that "the patient is a cooperative young man, well-developed, moderately nourished, slightly overweight in no acute distress. He is oriented to time, place and person, very cooperative in answering questions." (Ex. 11, p. 53) Under "Neurological" it is stated, "Patient is oriented to time, place and person. Motor, sensory, cerebellar are all grossly normal. . . Mood is slightly depressed. Affect is slightly anxious. Otherwise no abnormalities noted." (Ex. 11, p. 54)

On the Psychiatric and Mental Status Report, it states:

> "Appearance, grooming is good, hygiene is good, dress modestly, behavior slow moving, withdrawn. Stream of talk, low volume; tone is low, cooperation is guarded, defensive, mood depressed moderately, anxious. Affect

> appropriate. Sensorium oriented to time, place and person. Good spatial orientation, alert no clouding of consciousness. . . . Mental content reports of sadness and confusion present with feelings of anxiety. Insight is good, judgment is good." (Ex. 11, pp. 59, 60)

Throughout the beneficiary's hospitalization he underwent psychological testing and received individual psychotherapy sessions almost daily, group therapy on a regular basis and occasional family sessions. (Ex. 11, pp. 6-50) At the request of the beneficiary he was placed on a weight-reduction program and by the time of his discharge he had successfully reduced to his target weight.

It should be noted that just six days after admission the beneficiary requested a weekend pass which his attending psychiatrist, Dr. Monteleone approved. (Ex. 11, p. 11) Upon the beneficiary's return to the hospital after his weekend pass, he admitted smoking marijuana with a friend. (Ex. 11, p. 14) He was then denied any overnight passes. However, he was granted day passes throughout his hospitalization. (Ex. 11, pp. 23, 32, 38, 42)

The beneficiary throughout his hospitalization was concerned that he would be kept past the specified time ordered by the court. He reiterated on several occasions that he "wants to serve his time and get out of here." (Ex. 11, p. 20)

In an individual therapy session on October 11, 1982 the beneficiary again raised concern with Dr. Bailey that she "would keep him in the hospital past the 84-day court-enforced stay. I told him I would not." (Ex. 11, p. 33)

On October 31, 1982 the progress note states that "patient anxious about time being extended over the due date. Patient should be discharged on date arranged by court, i.e. November 13, 1982." (Ex. 11, p. 42)

In the progress note of November 5, 1982 it is noted that the beneficiary lost two pounds in the past three days and Dr. Monteleone noted to rule out anorexia. The beneficiary's parents were contacted and advised to watch his eating habits on his return home. (Ex. 11, pp. 45, 46)

As early as November 9, 1982 a progress note by Dr. Bailey states that "patient had made good gains and is ready to leave." (Ex. 11, p. 47)

The beneficiary was discharged on November 14, 1982 to be followed on a weekly basis with Dr. Bailey for psychotherapy. (Ex. 11, p. 49)

On December 15, 1982 a peer review by Blue Shield of California was performed and a total of 22 days of inpatient care was approved for CHAMPUS cost-sharing. The peer reviewers based their approval of only 22 days and not the entire hospitalization on the basis that there was (1) no clear indication for hospitalization--court referral is not a valid reason and (2) 22 days is satisfactory for evaluation, observation and diagnostic purposes. (Ex. 14, p. 2)

College Hospital by letter dated February 11, 1983 sought an informal review of the denial. (Ex. 5)

On March 22, 1983 Blue Cross of Washington and Alaska, the new fiscal intermediary, issued an Informal Review decision approving the first 22 days of hospitalization while denying the remaining 65 days because they had not been medically necessary. Their decision was based in part on the results of a peer review obtained from the American Psychiatric Association. (Ex. 6 and 14) On April 12, 1983 an automatic Reconsideration was issued upholding the denial of the final 65 days on the same basis since no additional documentation had been submitted to rebut the finding that prolonged hospitalization had not been medically necessary. (Ex. 7)

In a letter dated May 25, 1983 cosigned by the beneficiary's psychologist and psychiatrist requesting an OCHAMPUS Formal Review they offered evidence of the seriousness of the beneficiary's condition and the necessity of hospitalzation, by stating that:

> "Through intensive individual family group and milieu therapy, only gradually opened up to make contact with others. When discharge was recommended, had shown considerable progress. His defenses had lowered; he was much less depressed; he was making his first real academic gains in many years; he had matured to the point he could even speak philosophically of his experience.
>
> "However, we offer as further evidence of the seriousness of s condition and the necessity of hospitalization, the fact that has regressed since his discharge.
>
> "Still under outpatient treatment, has

become increasingly depressed. He is regularly missing school and is borderline anorexic." (Ex. 8)

OCHAMPUS obtained the beneficiary's inpatient hospital record prior to issuing a Formal Review decision and referred the entire case to the OCHAMPUS Medical Director, Dr. Alex R. Rodriguez, a board certified child psychiatrist, for additional psychiatric peer review. (Ex. 15 and 16)

In his opinion, Dr. Rodriguez, responding to the question, "was inpatient hospitalization medically necessary and the appropriate level of care", stated, in part:

"I conclude, . . . that it was not medically necessary. The appropriate level of care, that is to say for the evaluation of a presumed or possible psychiatric condition, would be the outpatient level of care. All the services provided to this beneficiary, group sessions, family sessions, individual psychotherapy sessions, and psychological testing could have been provided on an outpatient basis or they could have been provided while he was in custody at the outpatient level of care. Therefore, none of the hospital days are considered medically necessary, that is they were not required for the evaluation and treatment of a medical condition and did not reflect a standard of care as practiced in the United States. Neither of those conditions are met, and, therefore, none of the psychiatric inpatient hospitalization is considered medically necessary. This was an admission to protect the patient and to protect the community and for nothing else.

"Secondly, to underscore my more basic contention about his level of symptomatology or dysfunction, it is very clear that he was asymptomatic. The doctor presumed that there might be a depressive condition and, not uncommonly, some individuals who are aggressive who violate society's laws, in fact do have a chronic depressive condition. Yet, it's very clear from the admission history that there was very little to allow one to suspect that there was any depression. It was very clearly a history of characterological

problems, dysfunction in the community from the standpoint of meeting the expectations and rules of society and his family. This is underscored by the psychological testing which finds no evidence for depression, no evidence for neurotic kinds of conditions or psychotic condition but significant evidence for a mixed characterological problem, that is a character or personality disorder. The inpatient level of care is not appropriate for the evaluation or treatment of characterological, behavioral, or personality problems." (Ex. 15, p. 2)

Dr. Rodriguez did concur that the beneficiary did require psychological evaluation but that those services could have been provided at the outpatient level of care. He further stated in his report, as follows:

"He also required an adequate number of individual psychotherapy sessions to evaluate and provide any necessary psychotherapy for a presumed diagnosis, never confirmed, of dysthymic disorder. One of the peer reviewers indicated that 21 days would have been sufficient to have essentially done a forensic psychiatric evaluation. I would conclude that, on the basis of his symptomatology and the allegations, that a reasonable number of psychotherapy sessions that should be allowed for a clinical forensic psychiatric evaluation would have been 10 sessions. This is an acceptable, and maybe liberal, number for an individual to have been evaluated in depth with attention to specific kinds of mental status, changes, etc. to note any changes over time.

"I find that no more than 10 outpatient psychotherapy sessions are considered medically necessary in the evaluation of the presumed condition here, that the psychological testing and clinical psychological evaluation were medically necessary. A lower limit of three and an upper limit of five family therapy sesions were also medically necessary. Those are the only services that I find medically necessary in this instance." (Ex. 15, pp. 2 and 3)

The Formal Review decision was issued by OCHAMPUS on

December 28, 1983 denying benefits for the entire inpatient hospitalization based on the opinions of the CHAMPUS Medical Director and the APA peer reviewers that the inpatient psychiatric hospitalization was not the level of care required to provide necessary medical treatment or the appropriate level of care.

The fiscal intermediary was directed to recoup payments erroneously made for care provided during the first 22 days of hospitalization. (Ex. 16, p. 7)

The beneficiary's attorney, Samuel D. Osowski, Esq., by letter dated March 15, 1984 timely requested a hearing in this case.

Since the Formal Review decision resulted in the denial of the entire inpatient hospitalization, the amount in dispute is approximately $41,000.00.

The hearing was held July 6, 1984 before OCHAMPUS Hearing Officer, Edward S. Finkelstein. Those present at the hearing were the beneficiary's attorney, Samuel D. Osowski, Esq. and Gary Fahlstedt, the OCHAMPUS attorney/advisor.

Mr. Osowski presented no witnesses at the hearing; however, he submitted two exhibits into the Record as evidence of the medical necessity of the inpatient hospitalization of the beneficiary--a Declaration of the beneficiary's treating psychiatrist, Dr. Luigi Monteleone (Ex. 28) and a Declaration of Karol A. Bailey, Ph.D., the beneficiary's treating psychological and primary therapist (Ex. 27)

In Dr. Bailey's Declaration she states:

> "Treatment on an inpatient basis was indeed medically necessary. 's clinical picture presented some difficult treatment problems. At the time of admission, was an extremely constricted individual. His primary defense was denial. Under this lay a great deal of anger and probably depression. As all trained in psychodynamics know, denial is a very primitive defense mechanism and highly susceptible to collapse under sufficient impact. This was the issue in 's treatment. For therapy to progress, 's pervasive use of denial had to be challenged. did not have the ego strength to open himself to this kind of therapeutic challenge as an outpatient. Because of the strength of the emotions from which he had

protected himself for so long, needed a supportive milieu to give him the strength to risk facing his emotions without truly being overwhelmed by them. Even though he was in a supportive program, 's defenses were so brittle and his ego strength so low that I, as his primary therapist, was concerned about an explosion of overwhelming emotion and resultant decompensation. This possibility was clearly referred to in the psychological testing report." (Ex. 27)

Dr. Monteleone's Declaration states, in part:

"Hospitalizattion (sic) was absolutely necessary. The patient had a moderate to severe dysthymic disorder. . . .

". . . However, this patient was admitted for treatment and the level ot care needed was more intensive than could possibly have been provided on an out-patient basis. The patient reuired (sic) intensive observation and one-to-one therapy and support in a closely controlled environment. There was a very real need to protect the patient as well as the need to protect the community. He had been accused of a violent act, found guilty, and remandd (sic) by the court for appropriate medical care. The medical care would have been just as necessary without the court order. His hospitalization was, in no way, simply a juvenile detention maneuver. was in dire need of comprehensive therapy. His psychiatric condition, therefore, required treatment sufficiently complex and difficult so as to require and merit a psychiatric/psychological treatment team approach." (Ex. 28)

No actual testimony was presented at the hearing; however, Mr. Osowski stated for the record that the beneficiary had been treated previously in 1981 in Santa Anna Hospital for six weeks for a behavioral problem but never produced any documentation to show any relevancy between that hospitalization and the inpatient hospitalization to College Hospital.

The Hearing Officer, Edward S. Finkelstein, based on the record in this case and the testimony and evidence presented at the hearing, is submitting his Recommended Decision.

ISSUES AND FINDINGS OF FACT

The primary issue in this appeal is:

1. WAS THE COURT-ORDERED INPATIENT CARE PROVIDED FROM AUGUST 20 THROUGH NOVEMBER 14, 1982 MEDICALLY NECESSARY TREATMENT AND AT THE APPROPRIATE LEVEL OF CARE?

Medical Necessity/Appropriate Level of Care

The Department of Defense Appropriation Act, 1983, Public Law 97-377, prohibits the use of CHAMPUS funds for ". . . any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat, mental or physical illness, injury or bodily malfunction as assessed or diagnosed by a physician, dentist, (or) clinical psychologist. . . ." This restriction has appeared in each Department of Defense Appropriation Act since 1976. Specific regulation provisions pertinent to this case are set forth below.

The Department of Defense Regulation, DoD 6010.8-R, in Chapter II.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 the concept of appropriate medical care."

DoD 6010.8-R, Chapter II.B.14. Appropriate Medical Care is defined as:

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

"c. The medical environment in which the medical services are performed is at the level adequate to provide the required medical care."

Chapter IV, subsection G.1., states that services and supplies which are not medically necessary for the diagnosis and/or treatment of covered illness or injury are specifically excluded from the CHAMPUS Basic Program.

Chapter IV, paragraph B.1.g., states in part, that 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, subsection G.3., specifically excludes services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide the necessary medical care.

Chapter IV, subsection A.10., provides, "that 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."

Chapter IV, section G.22., specifically excludes, "Court ordered service and supplies; inpatient stays directed by or agreed to with the court as an alternative to incarceration for a criminal act (that is, jail or reform school) whether or not admission is to an authorized institution. It is intended that inpatient stays paid by CHAMPUS be directed only by an authorized physician provider." CHAMPUS benefits, however, are allowed for court ordered inpatient hospitalization stays only when the hospitalization would have been necessary and appropriate medical care in the absence of a court order.

In the present appeal, the beneficiary was ordered by the court, after his conviction of sexual assault on a 7-year old girl, to 120 days in a "treatment facility" less 36 days previously served, for a total of 84 days. (Ex. 13, p. 3) There are no records of the court proceedings in the case file nor was there any additional evidence presented to indicate the court's reasoning for committing the beneficiary to a treatment facility

rather than incarceration. The beneficiary's attorney, Mr. Osowski, at the hearing, did attempt to explain the court's actions by stating that there had been a psychological evaluation performed on the beneficiary during the court proceedings and it was on this evaluaton that the court based its final order. However, Mr. Osowski stated that he had been unable to obtain that psychological report from the court in time to present at the hearing. The Hearing Officer gave Mr. Osowski two weeks from the date of the hearing to obtain the report and submit it to him for the Record; however, the Hearing Officer has never received the report.

Based on the Record in this case, the Hearing Officer concurs with the Medical Director's opinion when he states:

> "In this instance, there was a view by the court, evidently, that the community might have needed some protection from the impulses of this beneficiary. In a Solomon-like judgment, I would assume, a decision was made, probably on the basis of pleas by the family and perhaps a probation officer and a lawyer, that this beneficiary be placed in a more empathetic and protective environment such as a psychiatric hospital rather than the juvenile detention hall. That would have been the more usual setting in which such a placement for protection of the community would occur and where psychiatric evaluation could proceed. There may be some concern with this individual about the dangerousness of the juvenile hall, particularly for child molesters, who are seen as having violated some very basic code of humanity and are generally at risk for being raped or otherwise assaulted, themselves. They may have placed him in the psychiatric facility for holding and for his protection." (Ex. 15, p. 1)

From the hospital records, on admission to College Hospital on August 20, 1982, the beneficiary's physical examination was unremarkable and he was oriented to time, place and person, was alert and was without delusions, hallucinations or perceptual distortions. (Ex. 11, p. 59) The Hearing Officer found no evidence to substantiate the medical necessity of inpatient hospitalization at the time of the beneficiary's admission. He further concurs with the Medical Director's opinion when he states, in part:

> ". . . What we have seen on the initial

admission and evaluation is an individual who was asymptomatic, evincing and expressing no significant emotional conditions, diseases or illnesses. He did indicate that he was specifically scared by the consequences of the allegations brought against him. Other than that, he expressed no history of psychiatric conditions that would have defined a primary psychiatric condition, particularly one that would make him dysfunctional in such a way that he would have required inpatient psychiatric care rather than outpatient evaluation and care which would be the alternative that we are looking at here." (Ex. 15, p. 1)

He further stated:

". . . to underscore my more basic contention about his level of symptomatology or dysfunction, it is very clear that he was asymptomatic. The doctor presumed that there might be a depressive condition and, not uncommonly, some individuals who are aggressive who violate society's laws, in fact do have a chronic depressive condition. Yet, it's very clear from the admission history that there was very little to allow one to suspect that there was any depression. It was very clearly a history of characterological problems, dysfunction in the community from the standpoint of meeting the expectations and rules of society and his family. This is underscored by the psychological testing which finds no evidence for depression, no evidence for neurotic kinds of conditions or psychotic condition but significant evidence for a mixed characterological problem, that is a character or personality disorder. The inpatient level of care is not appropriate for the evaluation or treatment of characterological, behavioral, or personality problems." (Ex. 15, p. 2)

It is noted by the Hearing Officer that just six days after admission to College Hospital the beneficiary requested and was granted a weekend pass. Upon his return to the hospital he admitted smoking marijuana and weekend passes were subsequently denied. However, throughout his hospitalization, he was granted day passes. (Ex. 11, pp. 11, 14, 23, 32, 38, 42) The continual issuance of such passes demonstrates that the beneficiary did not,

in fact, require the 24-hour a day treatment environment of a psychiatric hospital. If there was a medical necessity for the beneficiary to be hospitalized, the Hearing Officer does not understand the approval of day passes. That alone is enough evidence to satisfy the Hearing Officer that there was no medical necessity for inpatient hospitalization and that the treatment rendered to the beneficiary was above the appropriate level of care.

The progress notes reflect the real reason for the inpatient hospitalization. On September 9, 1982 it is stated that "the patient just wants to serve his time and get out of here." (Ex. 11, p. 20, emphasis supplied) Again, on October 11, 1982, Dr. Bailey stated, in part:

> "Patient raised concern that I would keep him in the hospital past the 84-day court-enforced stay. I told him I would not." (Ex. 11, p. 34)

Dr. Monteleone, on October 31, 1982 noted that "Patient is anxious about time being extended over the due date. Patient should be discharged on date arranged by court, i.e. 11/13/82." (Ex. 11, pp. 43, 44)

These entries indicate that the real reason for hospitalization was legal compulsion. If a medical necessity had dictated hospitalization, it would have also dictated the length of the hospitalization. It is clear form the record that the initial hospitalization and the discharge date were directed by the court order and that the hospitalization was employed as a form of detention during which treatment was provided, which, in the absence of a court order, could have been accomplished on an outpatient basis. Pursuant to the court order the hospitalization was a sentence as the court order specifically states that the beneficiary "will receive day for day credit for any time spent in a hospital facility." (Ex. 13, p. 3)

Any inpatient hospitalization directed by or agreed to with the court as an alternative to incarceration for a criminal act is specifically excluded under Chapter IV, section G.22. of the Department of Defense Regulations, DoD 6010.8-R.

It is clearly evident from the record that the beneficiary's admission to College Hospital was in fact in lieu of incarceration for his conviction of sexual assault on a 7-year old girl and not medically necessary.

There is no question that the beneficiary required some type ot psychological evaluation and treatment but those services

could have been provided at the outpatient level.

There is some mention in the hospital records of the patient being possibly anorexic. (Ex. 11, p. 46) However, there is no clinical documentation of anorexia. The records establish only that the beneficiary was placed on a weight reduction diet at his own request and reached his desired weight at the time of his discharge. (Ex. 11, p. 13 and 47) Any anorexic condition which may have developed did not exist at the time of the beneficiary's admission, therefore, could not have been a precipitant for hospitalization. In fact, at the time of his admission it is noted in the admission report that the beneficiary was "slightly overweight". (Ex. 11, p. 3). Any concern over the possibility of the beneficiary being anorexic was not noted until November 5, 1982--9 days prior to his discharge. (Ex. 11, p. 46)

Psychiatric Procedure Limitations

Chapter IV, paragraph C.3.i., provides, in part, as follows:

> 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 psychotherapy 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) Psychoterhapy: 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 and individual therapy sessions) in any seven (7) day period."

These limitations may only be exceeded for the purpose of crisis intervention. In this case, the record clearly reflects that the beneficiary frequently exceeded both the daily and weekly limitation. (Ex. 1 and Ex. 11, pp. 6-50)

Therefore, even if the inpatient hospitalization had been medically necessary and at the appropriate level of care, the benefits would not have been available for the concurrent psychotherapy provided by more than one therapist nor for the psychotherapy provided in excess of the limitations established by the Regulations.

SUMMARY

In summary, it is the Recommended Decision of the Hearing Officer that the entire inpatient hospitalization rendered to the beneficiary from August 20, 1982-November 14, 1982 was not medically necessary and was above the appropriate level of care and that said inpatient hospitalization was pursuant to a court order directing hospital admission in lieu of incarceration for the conviction of a criminal offense. CHAMPUS benefits are specifically excluded under Chapter IV, subsections G.1., G.3., and G.22. The Recommendation is based on the findings that:

1. The beneficiary did not require inpatient hospitalization at the time of his admission on August 20, 1982 to College Hospital.

2. The beneficiary did not require the type, level and intensity of services that could only be provided in an inpatient hospital setting, but treatment could have been rendered appropriately on an outpatient basis.

3. The beneficiary's inpatient hospitalization was directly as a result of a court order directing hospital admission in lieu of incarceration for the conviction of a criminal offense which services are specifically excluded by CHAMPUS Regulation.

The Hearing Officer Recommends that the Formal Review Decision dated December 28, 1983 denying the entire inpatient hospitalization from August 20, 1982-November 14, 1982 be upheld and the file should be returned to the Director, OCHAMPUS, for appropriate action under the Federal Claims Collection Act governing any erroneous payments made for the first 22 days of the beneficiary's inpatient hospitalization.

Edward S. Finkelstein
Hearing Officer

Dated: August 29, 1984