



ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

DEC 27 1983

HEALTH AFFAIRS

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

Appeal of)
Sponsor:) OASD(HA) File 83-49
SSN:) FINAL DECISION

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 83-49 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the beneficiary, the wife of a retired Air Force enlisted man. The appeal involves the denial of CHAMPUS cost-sharing of the last 7 days of an inpatient hospitalization at Hospital, from October 5, 1981, to October 17, 1981. The amount in dispute involves billed charges of \$1,116.50 for a semiprivate room for the last 7 days of the inpatient hospitalization (\$159.50 per day).

The hearing file of record, the tape of oral testimony 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 OCHAMPUS First Level Appeal determination denying CHAMPUS cost-sharing of the charges for the semiprivate room from October 10, 1981, to October 17, 1981, be affirmed as the inpatient stay does not meet regulatory requirements with respect to medical necessity and appropriateness of the level of care. The Director, OCHAMPUS, concurs in the Recommended Decision and recommends adoption of the Recommended Decision as the FINAL DECISION.

The Acting Principal Deputy Assistant Secretary of Defense (Health Affairs), acting as the authorized designee for the Secretary of Defense, after due consideration of the appeal record, concurs in the recommendation of the Hearing Officer to deny CHAMPUS cost-sharing of the beneficiary's hospitalization from October 10, 1981, to October 17, 1981, 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 charges for a semiprivate room during inpatient care from October 10, 1981, to October 17, 1981, as not being medically necessary and not being the appropriate level of care.

FACTUAL BACKGROUND

The appealing party was hospitalized at _____ Hospital, _____ from October 5, 1981, to October 17, 1981, pursuant to a diagnosis of cervical myospastic headache. She was hospitalized after failing to respond to outpatient treatment and for "evaluation, physical therapy and cervical myelography." The participating claim included charges of \$1,914.00 for a semiprivate room for 12 days at \$159.50 per day; additional charges for physical therapy, laboratory services, x-ray services, an EKG, an EMG, and several minor items brought the total billed charges to \$3,217.77. After the provider deducted the beneficiary's estimated cost-share of \$819.38, a CHAMPUS claim for the remaining \$2,398.39 was submitted.

The CHAMPUS Fiscal Intermediary determined that the first 5 days of hospitalization for treatment of her diagnosed condition and performance of a myelogram could be cost-shared; care provided during the last 7 days of inpatient treatment was denied CHAMPUS coverage because it could have been done on an outpatient basis. Room charges in the amount of \$1,116.50 for the last 7 days of inpatient care were denied. Following reconsideration, the room charges were again denied by the fiscal intermediary, and the beneficiary appealed to OCHAMPUS.

The record includes the discharge summary by the treating physician, _____, M.D. He stated in the discharge summary that the final diagnosis was cervical myospastic headache. In describing her course of stay, Dr. _____ stated, "The patient was admitted for evaluation, physical therapy, and cervical myelography." The hospital records include the comment "Will admit for scheduled myelogram."

In an October 20, 1981, letter by Dr. _____ to _____, M.D., Dr. _____ stated, "[the beneficiary] was released from the _____ Hospital after we admitted her for cervical myospasm." The doctor also stated, "I still think that many of her symptoms are depressive in origin and hopefully she will continue to derive improvement from the antidepressant medications."

Dr. _____ wrote a letter to the beneficiary on February 18, 1982, and stated:

"Regarding your hospitalization at Good Samaritan Hospital, I need not remind you of how severe your pain was prior to your coming into the hospital The unusual length of your hospitalization was because of

refractory response to physical therapy and adjusting the medications. In my opinion, this could not have been accomplished as an outpatient as we had tried to adjust your medications as an outpatient and had not succeeded over the previous two months that we had seen you. Outpatient physical therapy had not been of any benefit as well. We made every attempt to expedite your hospital course, but I do not think given the chronic refractory nature of your symptoms that five days would have been a sufficient amount of time to elicit the recovery that you eventually made."

In a May 11, 1982, letter to _____, M.D., Dr. _____ wrote that, "[the beneficiary] has chronic musculoskeletal complaints diagnosed as 'fibromyositis.'" This is the first mention in the record of fibromyositis.

The hospital records include a summary dated October 13, 1981, from _____, M.D., Medical Director, Rehabilitation Medicine Department, who consulted on the case. He stated, in part, that:

"Patient has had extensive physical therapy while in the hospital and this included most of physical modalities. Patient states that all the modalities had no affect [sic] upon her pain, in fact, the transcutaneous nerve stimulation might have increased it. Her complaints at the current time are still pain in her cervical paraspinal area with radiation to the interscapular area. The pain is increased by basically no activity and does not seem to be affected by body posture though lying in the supine position seems to help the pain.

* * * *

". . . I do not have a ready explanation for [the beneficiary's] pain at the current time. I am wondering if element of depression is present. In regards to further therapy, the only therapy that has not been tried is a course of fluromenthane spray treatment with gentle stretching which will be started. I am not overly optimistic that this will have a significant effect upon her pain."

The nursing notes reflect that the beneficiary had her myelogram during the morning of October 7, 1981. The nursing notes also document the beneficiary's pain and the nausea that she suffered. The nursing notes for October 9, 1981, state:

"Rechecked at 4:30 P.M. Patient [complains of] severe neck pain located between scapulae posteriorly and up to posterior neck. Says 'can't move, can't sit up . . .' Says she doesn't know how she can go home tomorrow [with] pain like this. Husband also upset about her pain. Dr. office called and message left to please return call."

OCHAMPUS referred the appeal record to the Colorado Foundation for Medical Care for a medical review. The two reviewers, both of whom are medical doctors with specialties in both internal medicine and occupational medicine, requested that the nurses' notes and medication administration record be obtained before their review was conducted. After obtaining these records, the medical review was submitted to OCHAMPUS. The medical reviewers stated, in part:

"By the end of the first 5 days, most diagnostic procedures had been completed and the nursing notes indicate possibility of discharge on the 10th. At that point the patient's complaints of pain seemed to get worse for a period of 24 hours. She continued to receive physical therapy, which served to make her pain worse, and pain medications for headache and neck pain. In our opinion the last 7 days of hospitalization were not medically necessary for continued diagnostic procedures as most of these were completed during the initial 5 days, and it is also our opinion that the records do not show the medical necessity for continuation of hospital confinement for treatment purposes. We think the patient could have been treated safely as an outpatient after the first 5 days.

* * * *

"We did not view the entire 12 days of inpatient care as the appropriate level of care for this patient. Continuing this patient's inpatient care for 12 days was not clearly shown to be medically necessary to treat her problem and we can see no reason why care shouldn't have been continued as an outpatient after the first 5 days."

After receiving the medical review, OCHAMPUS issued its First Level Appeal determination on September 22, 1982, and denied the last 7 days of inpatient care because the level of care was not found to be appropriate for the patient's condition.

The beneficiary appealed the denial and requested a hearing; the beneficiary also enclosed an October 14, 1982, letter from Dr. that stated:

"[The beneficiary] was first seen by me on August 31, 1981 at the request of Dr.

She has a very long history of severe pain and despite multiple attempts at outpatient physical means including injections and traction, she continued to have pain and required narcotic analgesics to control these symptoms. Because of her severe pain and her lack of response as an outpatient, we admitted her to the hospital for further evaluation and therapy. The evaluation did include myelography and consultation with Dr. a physical medicine specialist. Programs were designed to manage this woman's pain, as well as medication adjustment while in the hospital.

"In view of the fact that all attempts to manage this woman as an outpatient had been for naught, I do not feel limiting her to a five day stay to try to control her symptoms is appropriate I believe that [the beneficiary's] refractory case did require a special extended stay in a hospital.

"To deny a patient coverage after the fact, I believe, is arbitrary and unfair. Certainly if a patient knows that her hospital stay beyond a certain point will not be covered, she can make a decision to stay and pay the difference or go home and have attempted treatment as an outpatient."

At the hearing the beneficiary introduced into the record a March 30, 1983, letter from Dr. , which states, in part, that:

"This lady has fibrositis or fibromyalgia which is the current terminology. This is a real syndrome accepted in many rheumatology and neurology circles as being related to the inability of muscles to relax, particularly at night during the normal restorative and restful phases of sleep.

"[The beneficiary's] prolonged stay in the hospital was an attempt to:

"1. Make certain that there was no underlying pressure on spinal nerve roots.

"2. Attempt to get a control of [the beneficiary's] symptoms, as she had not responded to out-patient treatment.

"3. Finally attempt to, with intensive physical and medical therapy, to get her symptoms under control."

The hearing was held on May 4, 1983, in The beneficiary represented herself, though she was accompanied by her husband who did not testify.

At the hearing the beneficiary testified that her correct diagnosis was fibrositis, that it was not a new diagnosis, and had always been the diagnosis. The testimony included the following question by the Hearing Officer and the beneficiary's response:

"Did Dr. . . . discuss with you at any time the length of confinement; in other words, did he have potential release dates set up which were bypassed for various reasons?"

"No, he did not."

The Hearing Officer, Mr. . . . , has issued his Recommended Decision and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are whether the inpatient treatment was medically necessary and whether it was the appropriate level of care.

The Department of Defense Appropriation Act, 1976, Public Law 94-212, prohibited the use of CHAMPUS funds for, ". . . any service or supply which is not medically or psychologically necessary to diagnose and treat a mental or physical illness, injury, or bodily malfunction" This same limitation has been in all subsequent Department of Defense Appropriation Acts. The Regulation governing CHAMPUS, DoD 6010.8-R, incorporates this limitation in chapter IV, as follows:

"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"

To interpret this Regulation, as it relates to the inpatient hospitalization in dispute, requires a review of what is meant by the term "medically necessary." The definition in DoD 6010.8-R, chapter II, provides:

"'Medically Necessary' means the level of services and supplies (that is, frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury including maternity care and well-baby care. Medically necessary includes concept of appropriate medical care."

The definition of "appropriate medical care" includes, in part, the requirement that,

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

The Regulation in chapter IV, G.3., specifically excludes from the CHAMPUS Basic Program, "Services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care." An exception to the specific exclusion of care related to noncovered inpatient stays exists for care related to inpatient admissions primarily to perform diagnostic tests. The Regulation at chapter IV, G.4., addresses the exception by stating that CHAMPUS diagnostic "services and supplies related to an inpatient admission primarily to perform diagnostic tests, examinations, and procedures that could have been performed on an outpatient basis" may be cost-shared as if performed on an outpatient basis.

The hospital records and the discharge summary from Dr. make it clear one of the primary reasons for the beneficiary's admission as an inpatient was diagnostic testing. For example, Dr. wrote in the discharge summary and hospital notes that, "the patient was admitted for evaluation, physical therapy and cervical myelography." In addition, the hospital records indicate "will admit for scheduled myelograph." Dr. letter of March 30, 1983, stated the beneficiary's prolonged stay in the hospital was an attempt to make certain there was no underlying pressure on spinal nerve; an attempt to get control of her symptoms as she had not responded to outpatient treatment; and, an attempt to get her symptoms under control. His October 14, 1982, letter gave the reasons as "further evaluation and therapy."

The above records confirm the importance of the diagnostic testing, which was generally completed during the first 5 days of hospitalization. The record shows no specific treatment program for the beneficiary during her last 7 days as an inpatient that could not have been conducted on an outpatient basis. Dr. letter does not explain why the inpatient physical therapy, which apparently was not helping, could not have been performed on an outpatient basis. In addition, Dr. does not address the nursing notes which indicate the beneficiary was to be discharged on October 10, 1981, nor does he explain why she was not discharged on the 10th. The discharge summary, the

hospital records, and the nurses' notes support the opinion of the two medical reviewers for the Colorado Foundation for Medical Care that most diagnostic procedures were completed during the initial 5 days. The nursing notes clearly reflect that on October 9, 1981, it was contemplated that the beneficiary would be discharged. Although the record does not show any discharge order by the doctor for October 10 or any order by the doctor that she remain in the hospital after October 10, the nursing notes reflect that on the afternoon of October 9 both the beneficiary and her husband were upset over her pain and prospective discharge the following day. The nursing notes, which were recorded at the time that the incident occurred, clearly contradict the testimony of the beneficiary (given nearly 2 years after her hospitalization) that Dr. did not discuss with her at any time the length of her confinement or potential release dates.

The beneficiary, at the hearing, apparently considered it significant that the records did not reflect her diagnosis to be fibrositis. She stated that this was not a new diagnosis but had always been her diagnosis. This is clearly contradicted by Dr. discharge summary which gives the final diagnosis as cervical myospastic headache. In an October 20, 1981, letter Dr. again referred to her admission for cervical myospasm. In a February 18, 1982, letter Dr. referred to her severe headaches and neck pains with no mention of fibromyositis. The first reference in the record to fibromyositis is the May 11, 1982, letter from Dr. to Dr. . This letter was part of the file and available to the medical reviewers when they rendered their opinion.

It may be that Dr. after a period of time in treating his patient, concluded that her condition should be diagnosed as fibrositis and that it always was fibrositis; however, the statement by the beneficiary at the hearing that this always has been the diagnosis is contradicted by the medical record. Regardless of the diagnosis, the issue is - could the care received during the last 7 days of hospitalization have been provided on an outpatient basis? The answer is yes.

The Hearing Officer concluded that, due to lack of documentation demonstrating medical necessity and appropriate level of care subsequent to the initial 5 days of inpatient care, the last 7 days of inpatient care were neither medically necessary nor at the appropriate level of care since such care could have been safely provided on an outpatient basis. This conclusion is well supported by the record. I find, therefore, that the beneficiary's inpatient care from October 10, 1981, through October 17, 1981, is not covered by CHAMPUS because the record does not document the care as medically necessary or at the appropriate level. Based on this finding, all nondiagnostic services and supplies related to the last 7 days of hospitalization of the beneficiary are also excluded from CHAMPUS coverage.

It is noted that the beneficiary was concerned over a possible implication that she was addicted to the pain medication that had been prescribed for her and that part of the hospitalization may have been related to treatment of withdrawal symptoms. It was the medical opinion of the two medical reviewers that "the records do not show that she was addicted to Demerol or that she had withdrawal symptoms when Demerol was stopped, and the record in the treatment plan was not designed to treat drug addiction." The medical review relied upon by OCHAMPUS contained no finding of addiction to the prescribed medication. The beneficiary's testimony at the hearing and the exhibits she submitted relating to her prescriptions further clarify this matter.


SECONDARY ISSUE

Telephone Charges

In reviewing the file, I note that part of the charges denied cost-sharing included \$19.92 for a telephone. The Regulation in chapter IV, G.67., excludes, "Personal comfort and/or convenience items such as beauty and barber services, radio, television and telephone." The telephone charge was also properly denied.

SUMMARY

In summary, it is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) that the last 7 days of a 12-day hospitalization were not medically necessary and were above the appropriate level of care; the care that was provided from October 10, 1981, to October 17, 1981, could have been conducted on an outpatient basis. Billed charges of \$1,116.50, consisting of \$159.50 per day for a semiprivate room for 7 days from October 10, 1981, to October 17, 1981, are denied CHAMPUS cost-sharing. 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