



ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

SEP 17 1984

HEALTH AFFAIRS

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

Appeal of)
)
Sponsor:) OASD(HA) FILE 84-17
) FINAL DECISION
SSN:)

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-17 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 his mother, the wife of an active duty officer of the United States Navy. The appeal involves the denial of inpatient psychiatric care in excess of 60 days received by the beneficiary during calendar year 1983. The exact amount in dispute cannot be determined as CHAMPUS claims for the period after 60 days have not been filed; however, the amount in dispute is approximately \$3,642.90.

The hearing file of record, the tape of oral testimony and the arguments presented at the hearing, the Hearing Officer's Recommended Decision, and the Analysis and Recommendation of the Director, OCHAMPUS, have been reviewed. It is the Hearing Officer's recommendation that inpatient psychiatric care beyond 60 days should not be cost-shared because the beneficiary did not meet the requirements for waiver of the 60-day calendar year limitation. The Hearing Officer found that the beneficiary was not suffering from an acute mental disorder which resulted in his being placed at a significant risk/danger to himself or others at or around the 60th day of hospitalization which required the type, level, and intensity of services that could only be provided in an acute patient hospital setting. The Hearing Officer further found the beneficiary could have been treated in a residential treatment center after the first 60 days of acute inpatient hospitalization. The Hearing Officer also found that the beneficiary did not suffer any medical complications at or around the 60th day of hospitalization which would have required the type, level, and intensity of services which could be provided only in an acute inpatient hospital setting.

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 inpatient psychiatric hospitalization and related services in excess of 60 days in calendar year 1983. This determination is based on findings that: (1) the beneficiary was not suffering from an acute mental disorder which resulted in the beneficiary being a significant danger to himself or others at or around the 60th day of inpatient care, and (2) the beneficiary did not require the type, level, and intensity of services that could be provided only in a hospital setting.

FACTUAL BACKGROUND

The beneficiary was 17 years old when he was admitted to McLean Hospital on January 13, 1983, for a severe obsessive compulsive disorder (hereinafter OCD). The beneficiary was discharged on March 27, 1983. The beneficiary's 60th day of inpatient psychiatric hospitalization in calendar year 1983 was March 13, 1983; therefore, the period from March 14, 1983, through March 27, 1983, is the period in excess of 60 calendar days that is the subject of dispute in this appeal.

The Hearing Officer's Recommended Decision described in detail the beneficiary's background, the events leading to the beneficiary's admission, and the course of treatment as described in the medical records. 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.

Approximately 1 month after the beneficiary had been admitted, the provider, in a letter dated February 14, 1983, requested an additional 30 days of inpatient hospitalization to provide the opportunity of maximizing the impact of both the beneficiary's behavior treatment and further to allow the provider to monitor the efficiency of his somatic therapy and adjust that somatic therapy accordingly. On March 29, 1983, the OCHAMPUS Benefit and Provider Authorization Branch notified the sponsor that the waiver of the 60-day limit was denied because the criteria for waiver were not met. Both the provider and the beneficiary appealed. In a Formal Review Decision dated November 17, 1983, OCHAMPUS denied the waiver. The beneficiary again appealed and requested a hearing. The hearing was held on March 15, 1984, in Washington, DC before OCHAMPUS Hearing Officer Suzanne S. Wagner. Present at the hearing was the beneficiary's mother, who was the beneficiary's authorized representative in this matter. The Hearing Officer has issued her Recommended Decision and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are: (1) whether the beneficiary was suffering from an acute mental disorder which resulted in the beneficiary being a significant danger to self or others and the beneficiary required the type, level, and intensity of service that could be provided only in an inpatient hospital setting and (2) whether the care was provided at the appropriate level.

The Hearing Officer in her Recommended Decision correctly stated the issues and correctly referenced applicable law, regulations, and a prior FINAL DECISION in this area. In particular, the Hearing Officer in her Recommended Decision cited the Department of Defense Appropriation Act of 1983 (Public Law 97-377, 96 Stat. 1830) which prohibited the expenditure of Department of Defense appropriated funds for inpatient psychiatric care in excess of 60 days for new admissions on or after January 1, 1983, except in specific circumstances. The Hearing Officer also cited and followed the precedential decision in this area OASD(HA) Case File 83-54, which was issued by this office on March 1, 1984.

The Hearing Officer found that:

"1. The beneficiary was not suffering from an acute mental disorder which resulted in his being placed at significant risk/danger to himself or others at or around the 60th day of hospitalization which required the type, level, intensity of services that could only be provided in acute inpatient hospital setting.

"2. The beneficiary could have effectively been treated in an RTC level of care after the first 60 days of acute inpatient hospitalization.

"3. The beneficiary did not suffer any medical complications at or around the 60th day of hospitalization which would have required the type, level and intensity of services which could be provided only in an acute inpatient hospital setting.

"4. Estoppel has no merit inasmuch as the benefit funding limitation was properly and adequately published in a timely fashion in the Congressional Record."

The Hearing Officer recommended that because inpatient care beyond 60 days is not authorized that all services, including inpatient individual therapy related to inpatient care in excess

of 60 days, should be excluded from CHAMPUS cost-sharing. The Hearing Officer recommended that the formal review decision to deny the waiver of the 60-day acute inpatient limitation dated November 17, 1983, be upheld.

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 recommendation, as the FINAL DECISION in this appeal.

Though I have adopted the Hearing Officer's Recommended Decision as the FINAL DECISION, I would like to emphasize and to supplement several issues that were addressed by the Hearing Officer. The Hearing Officer in her Recommended Decision referenced OASD(HA) Case File 83-54, a precedential FINAL DECISION addressing the degree of risk required to meet the significant risk/danger guidelines for granting a waiver of the 60-day limit. In OASD(HA) Case File 83-54, it was held:

"The Hearing Officer found the attending psychiatrist's arguments for a waiver centered on potential or future, as opposed to current, risk; i.e., that the beneficiary may be a potential or future risk to himself or others but not a current risk. I agree with the Hearing Officer's finding. In interpreting the intent of the funding restriction, I find the time at which the patient must present a significant danger or risk to be on or about the 60th day of inpatient care. . . . If a beneficiary does not pose a significant risk at that time (i.e., a current risk), continued acute inpatient care is not considered medically necessary as required for CHAMPUS coverage and a lower level of treatment should be undertaken. This is certainly the intent of the funding limitation. If a beneficiary subsequently becomes a significant risk, rehospitalization is authorized under the waiver guidelines.

"In addressing the degree of risk required to meet the significant risk/danger guidelines for granting a waiver of the 60-day limit, the Hearing Officer adopted a standard of suicidal or homicidal behavior of a floridly psychotic beneficiary. I agree that such a patient would constitute a significant danger to self or others; however, other acute mental disorders could also result in significant risk or danger. Further, a significant risk or danger could be posed by

less than suicidal or homicidal behavior. A more general standard, applied on a case by case review, would be a current risk of serious harm to self or others that required inpatient hospital care. It is, of course, incumbent upon the appealing party to demonstrate the patient represented such a risk that could not be treated in other than an acute level."

The guidelines regarding the limit on inpatient psychiatric care issued by OCHAMPUS in the CHAMPUS Policy Manual, volume I, chapter I, section 11, provide, in relevant part, that:

"1. It is the interpretation of OCHAMPUS that the intent of Congress in enacting the 60 day limitation on acute inpatient mental health services and the waiver provision was to create only a very narrow scope of conditions qualifying for a waiver provision.

* * *

"2.1. Patient is a risk to self or danger to others.

"a. Condition is of such severity as to require 24-hour surveillance and services that cannot be rendered by partial hospitalization or outpatient services (whether or not such services are available or covered by CHAMPUS).

"b. Destabilization has occurred in a patient who is acutely disturbed from severe mental illness, poses an imminent risk to self or a danger to others, and who could not be safely maintained by intensive acute care partial hospitalization services (whether or not such services are available or covered by CHAMPUS). The destabilization is characterized by sudden and severe disruption of significant key supporting mechanisms or relationships; such as death or loss of intimate other, aberrant medication response, sudden and serious intercurrent medical condition.

* * *

"3. Documentation. Documentation submitted with the Request for Waiver must be adequate to justify the decision of the reviewers in approving a request for waiver.

"3.1. When adequate documentation is not present, reviewers may not assume on the basis of fragmentary documentation that the request is justified.

* * *

"3.4. Guidelines for determining adequacy of documentation include the following:

"a. Mental Health Treatment Report (MHTR) and Treatment Summary provide a concise statement of patient condition, progress and factors asserted as qualifying for a waiver request. Reviewers are unable to preserve the integrity of the review process if they engage in interpreting the meaning and conclusions of the provider requesting the waiver.

* * *

"3.5. Documentation submitted must be fully responsive to the specific, narrow scope of conditions qualifying for waiver within the broader context of the principles stated above. Documentation that is responsive only to the general principles is not adequate. It must provide specific definition of:

"a. The severity of the patient's condition.

"b. The services/treatment to be rendered.

"c. The nature of the danger to the patient or others.

"d. The manner in which inpatient care will meet treatment objectives in a way that cannot be accomplished in alternative settings.

"3.6 The documentation should provide the following information in the treatment plan and in chart documentation:

"a. Information regarding prior admissions for inpatient care.

"b. Principal diagnostic impression and significant associated diagnosis approved by a physician or a clinical psychologist using DSM III codes.

"c. Treatment plan review and signed approval by physician or psychiatrist, clinical psychologist and other relevant health care professionals responsible for the treatment of the patient, in accord with treatment plan standards and criteria contained therein.

"d. * * *

"e. Adequate description of current symptomatology and/or behavior (as determined by clinician, case manager, medical director, and utilization review committee) supportive of the diagnosis and need for treatment.

"f. * * *

"g. Treatment plan specific to objectives, milestones, services, treatment duration, and prognosis for the inpatient length of stay preceding request for waiver.

* * *

"j. Daily and other summary progress notes."

It is not disputed that the beneficiary is a seriously disturbed adolescent in need of psychotherapy. As the record reflects, obsessive compulsive disorder in childhood is a rare psychiatric illness which is estimated to occur in about 1 percent of the child psychiatric population. The information provided by the beneficiary shows that "in view of the severity of illness in childhood (50 percent remain chronic) and relative refractoriness to other treatments, the pharmacotherapy of this condition is being explored in an ongoing study at the National Institute of Mental Health."

CHAMPUS claims are generally paid on the basis of a billing statement; however, if a question exists concerning the medical or psychiatric necessity of treatment, documentation beyond a billing statement is required. In the case of a request for a waiver of the 60-day limit on inpatient mental health care, it is not enough to establish that it is medically necessary. The criteria for granting the waiver make it mandatory that it be established that the patient is a risk to self or danger to others. Detailed and specific documentation is necessary and the documentation must establish that the patient was a risk to self or a danger to others at or near the 60th day of inpatient care.

The documentation submitted by the physicians involved in the treatment consisted of letters summarizing the beneficiary's condition and their professional opinions and recommendations

regarding the need for a waiver of the 60-day limitation. The record does not include any copies from McLean Hospital of the beneficiary's medical records prepared during the course of his treatment. For example, the provider did not submit an admission summary, treatment plan, updated treatment plan, daily staff notes, progress notes from therapy sessions, or a discharge summary. (Such medical records are required to be kept under the Joint Commission on Accreditation of Hospitals (JCAH) standards for adolescent and adult psychiatric, alcohol and drug abuse facilities.) In particular, the daily staff notes and progress notes from therapy sessions describing the beneficiary's actions and status during the last week to 10 days of his initial 60 days are of crucial importance in determining whether a patient is a threat to self or others. However, these notes were not submitted by the provider.

There is no dispute by OCHAMPUS that the beneficiary needed, initially, the type of care provided an inpatient in an acute care psychiatric hospital. However, the documentation submitted by the provider to justify a waiver of the 60-day limit was totally inadequate.

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 McLean Hospital and to deny a waiver of the Appropriation Act's 60-day limit for the beneficiary's extended hospitalization beyond 60 days. This decision is based upon (1) the beneficiary was not suffering from an acute mental disorder which resulted in the beneficiary being a significant danger or risk to himself or to others at or around the 60th day of hospitalization, and (2) finding the beneficiary did not require the type, level, and intensity of services that could be provided only in an inpatient acute care 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 mental health care beyond 60 days is above the appropriate level of care and excluded from CHAMPUS cost-sharing. This determination is based on the finding that the beneficiary could have been treated in a residential treatment center and did not require the type, level, and intensity of services that could be provided only in an inpatient hospital facility. As I have found inpatient care beyond 60 days is not authorized, 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 care beyond 60 days in calendar year 1983, and the appeal of the beneficiary 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.