ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

HEALTH AFFAIRS

FEB 4 1985

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

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) File 85-01
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 85-01 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 her mother. The appeal involves the denial of CHAMPUS cost-sharing of inpatient psychiatric hospitalization and related care at the Truckee Meadows Hospital after the first 60 days of care (June 7, 1983, through August 23, 1983). The amount in dispute is approximately $30,860.00.

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 CHAMPUS cost-share the first 60 days of hospitalization and related medical services (April 8, 1983, through June 6, 1983) and deny the remaining inpatient psychiatric hospitalization and related medical services (June 7, 1983, through August 23, 1983). The Hearing Officer found the care after June 6, 1983, was above the appropriate level of care required for medically necessary treatment and the beneficiary was not a significant risk to herself or others and did not require an acute inpatient setting after June 6, 1983. The Hearing Officer also recommended that CHAMPUS cost-share the reasonable charge which would have been incurred at a residential treatment center and one session of family therapy per week and one session of individual therapy per week from June 7, 1983, through August 23, 1983.

The Director, OCHAMPUS, partially concurs in the Recommended Decision and recommends adoption of the Recommended Decision as the FINAL DECISION to the extent cost-sharing the inpatient psychiatric hospitalization from April 8, 1983 through June 6, 1983, is approved, and cost-sharing inpatient psychiatric hospitalization from June 7, 1983, through August 23, 1983, is denied. The Director, OCHAMPUS, recommends rejection of the Hearing Officer's recommendation to cost-share the reasonable

charge which would have been incurred at a residential treatment center, and family and individual therapy from June 7, 1983, through August 23, 1983. The Director, OCHAMPUS, recommends issuance of a FINAL DECISION which rejects the Hearing Officer's recommendation to cost-share the reasonable charge which would have been incurred at a residential treatment center and family and individual therapy from June 7, 1983, through August 23, 1983, as neither the regulation or statute allow CHAMPUS cost-sharing of care at a residential treatment center under the circumstances of this case nor cost-sharing of care related to a noncovered service.

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

The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, concurs in the recommendation of the Director, OCHAMPUS, to deny CHAMPUS cost-sharing of the reasonable charge which would have been incurred at a residential treatment center and individual and family therapy from June 7, 1983, through August 23, 1983. To the extent the Hearing Officer's Recommended Decision is inconsistent with this determination, it is rejected.

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to allow CHAMPUS cost-sharing of the appealing party's claims for the inpatient psychiatric hospitalization from April 8, 1983, through June 6, 1983; deny CHAMPUS cost-sharing of the inpatient psychiatric hospitalization from June 7, 1983, through August 23, 1983; deny cost-sharing of one family therapy session and one individual therapy session per week from June 7, 1983, through August 23, 1983, and deny CHAMPUS cost-sharing of the reasonable charge which would have been incurred at a residential treatment center from June 7, 1983, through August 23, 1983. The determination to deny inpatient psychiatric hospitalization from June 7, 1983, through August 23, 1983, is based on the findings that, (1) the care for this period was above the appropriate level of care required for medically necessary treatment; (2) the beneficiary's mental disorder did not result in significant risk to herself or others and did not require a type, level, and intensity of service that would only be provided in an inpatient setting. The determination to deny cost-sharing of the reasonable charge which would have been incurred at a residential treatment center is based on the statute limiting inpatient psychiatric care to 60 days unless the appealing party qualified under one of the four exemptions to the 60-day limit. The appealing party does not qualify under one of these exemptions to the 60-day limit; therefore, CHAMPUS cannot cost-share the reasonable charge which would have been incurred at a residential treatment center. Because the care provided from June 7, 1983, through August 23, 1983, is a noncovered service, CHAMPUS cannot cost-share the individual and family

therapy because these services represent care related to a noncovered benefit.

FACTUAL BACKGROUND

The beneficiary, the daughter of a United States Coast Guard Commander, was hospitalized at Truckee Meadows Hospital on April 8, 1983, with a diagnosis of Dysthymic Disorder and Borderline Personality Disorder. CHAMPUS cost-shared the first 60 days of care from April 8, 1983, through June 6, 1983. CHAMPUS denied cost-sharing of the remaining period of hospitalization from June 7, 1983, through discharge on August 23, 1983.

The Hearing Officer's Recommended Decision describes in detail the beneficiary's medical condition, the events leading to the hospitalization, and the course of treatment. 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 August 20, 1984, before Hearing Officer Hanna M. Warren. Present at the hearing were the beneficiary's mother, her stepfather, Jim Lippert, Ph.D., and a representative from OCHAMPUS. 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 inpatient care provided from June 7 through August 23, 1983, satisfied the requirements for waiver, and (2) whether the inpatient care subsequent to June 6, 1983, was provided above the appropriate level of care. A secondary issue is whether CHAMPUS can cost-share the reasonable charge which would have been incurred at a residential treatment center from June 7, 1983, through August 23, 1983, and individual and family therapy for the same period.

With respect to the first issue, the Hearing Officer in her Recommended Decision correctly stated the issue and correctly referenced the applicable law, regulations, and a prior precedential FINAL DECISION in this area (OASD(HA) Case File 83-54, dated March 1, 1984).

Title 10, United States Code, Section 1079(a)(6) states that:

> "Inpatient mental health services may not (except as provided in subsection (i) be provided to a patient in excess of 60 days in any year."

Subsection (i) sets forth the four exceptions to the 60-day inpatient psychiatric limit as follows:

> " (i) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services--
>
> (1) provided under the program for the handicapped under subsection (d);
>
> (2) provided as residential treatment care;
>
> (3) provided as partial hospital care; or
>
> (4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense."
>
> (NOTE: Prior to October 1, 1984, this limitation was contained in the Department of Defense Appropriation Act of 1983 (Public Law 97-377, section 785).)

Clearly, the beneficiary does not qualify under exemptions (1) and (3). The CHAMPUS criteria for waiver based on extraordinary circumstances requires the beneficiary to be a significant risk to herself or others around the 60th day of hospitalization. The Hearing Officer found the record does not document the beneficiary was a significant risk to herself or others or required the type, level, and intensity of acute inpatient care during the period in issue. Consequently, the Hearing Officer recommended that CHAMPUS deny cost-sharing of the inpatient psychiatric hospitalization beyond the 60th day.

I concur in the Hearing Officer's findings and recommendations. I adopt the Hearing Officer's findings and recommendation on this issue as the FINAL DECISION in this appeal. However, I reject the Hearing Officer's recommendation that CHAMPUS cost-share the reasonable charge which would have been incurred in a residential treatment center from June 7, 1983, through August 23, 1983. The statutory provision quoted above clearly limits CHAMPUS cost-sharing to enumerated exceptions. There is no exception for inpatient hospitalization where a residential treatment facility is not available in the general locality. Inpatient care, ". . . provided as residential treatment" is an exception; however, the care herein was provided as acute hospitalization, not residential treatment. The beneficiary must be admitted to a residential treatment facility to meet the exception. To allow cost-sharing of acute inpatient

care as if it was provided in a residential treatment center would not be in accordance with the statutory provision. The regulatory exception allowing cost-sharing of inpatient hospitalization if no lower level of care facility is available (DoD 6010.8-Rm chapter IV, B.1.g.) is superceded by the above quoted statute for inpatient psychiatric care.

Similarly, I must reject the Hearing Officer's recommendation to cost-share the individual and family therapy provided June 7 through August 23, 2983. Again, the statute makes no exception for these services provided during the unauthorized inpatient stay, and the services are further excluded from CHAMPUS coverage under DoD 6010.8-R, chapter IV, G.66., as services related to a noncovered condition or treatment.

The Hearing Officer found the inpatient care subsequent to June 6, 1983, was above the appropriate level of care. I concur in and adopt this finding. The appeal record does not establish that acute care was required, or that care could not have been provided in a residential treatment center.

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to authorize CHAMPUS cost-sharing of the inpatient psychiatric hospitalization from April 8, 1983, through June 6, 1983, and to deny cost-sharing of the inpatient psychiatric hospitalization, including professional services, from June 7, 1983, through August 23, 1983, and the beneficiary's request for a waiver of the 60-day inpatient psychiatric care limitation. This FINAL DECISION is based on findings the beneficiary was not a significant risk to herself or others and did not required the type, level, and intensity of service of an inpatient (acute) setting during the period in issue, and that care subsequent to June 6, 1983, is above the appropriate level of care. The Hearing Officer's recommendation that CHAMPUS cost-share the reasonable charge which would have been incurred at a residential treatment center for the period of June 7, 1983, through August 23, 1983, is rejected. 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

Rec Dec
85-01

RECOMMENDED HEARING DECISION

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

Beneficiary:

Sponsor:

Sponsor's SSN:

This is the recommended decision of CHAMPUS Hearing Officer Hanna M. Warren in the CHAMPUS appeal of , and is authorized pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, Chapter X. The appealing party is the mother of the teenage beneficiary, The appeal involves the denial of CHAMPUS cost sharing for inpatient psychiatric hospitalization and related care from June 7, 1983 to discharge on August 23, 1983, from Truckee Meadows Hospital, Reno, Nevada. The amount in dispute is approximately $25,050.00 for care at Truckee Meadows Hospital and $5,810 for services billed by Stuart M. Wyckoff, M.D. These amounts were obtained by Ms. Stevens subsequent to the hearing (Exhibit 39). Dr. Wyckoff advised her he had only been paid for services through May, 1983. His bill for June was $2,145 (Exhibit 1, page 14) and for July was $2,165 (Exhibit 1, page 15). There is no statement in the hearing file for services in August and I calculated $1,500 due for 3 weeks care at his usual charge of $500 a week. Some of the care billed by Dr. Wyckoff was rendered by Dr. Jim Lippert, it was revealed at the hearing. I am not certain whether that is correct procedure for billing but it has no effect on my decision. I have asked Ms. Rediger to contact Dr. Wyckoff to identify and assist him with the correct billing procedure.

The hearing file of record has been reviewed along with the testimony at the hearing. It is the OCHAMPUS position that the formal review determination issued January 19, 1984, denying CHAMPUS cost sharing of the inpatient psychiatric hospitalization and related medical care provided to the beneficiary from June 7, 1983 through August 23, 1983 be upheld on the basis the CHAMPUS Regulation excludes inpatient psychiatric hospitalization beyond 60 days unless certain requirements are met which have been promulgated by the Director of OCHAMPUS and those requirements have not been met in this case and, in addition, the care rendered during that period was above the appropriate level required for medically necessary care.

A hearing was held on August 20, 1984, before OCHAMPUS Hearing Officer Hanna M. Warren, the beneficiary's mother, her step-father, and Jim Lippert, Phd. Linda Rediger attended the hearing representing OCHAMPUS.

The Hearing Officer, after due consideration of the appeal record, partially concurs in the recommendation of OCHAMPUS to deny CHAMPUS cost sharing but partially disagrees with the recommendation of OCHAMPUS. The recommended decision of the Hearing Officer is therefore to allow CHAMPUS cost sharing of all care involved in this hearing from date of admission on April 8, 1983 through June 6, 1983 (60th day) but to deny inpatient hospitalization and related care at that level from June 7th to discharge, but to approve CHAMPUS cost sharing during that period at the reasonable cost which would have been incurred at a residential treatment center.

FACTUAL BACKGROUND

The beneficiary was 15 years old when she was admitted on April 8, 1983, to Truckee Meadows Hospital with a diagnosis of Dysthymic Disorder and Borderline Personality Disorder. Prior to her hospital admission she had been admitted to Wittenburg Hall, the juvenile detention center in Reno, Nevada, after being taken there by the police. She had become extremely disruptive at home; was kicking and screaming, and broke out a window. Her mother and step-father called the police and she was very hostile towards them and kicked and screamed at them also. She was taken to juvenile hall and was there for just under a week before she was admitted to the hospital. While she was in juvenile hall she was evaluated by Dr. Jim Lippert who recommended she be admitted to Truckee Meadows Hospital. The probation department contacted the hospital and arranged for her admission, which was on a voluntary basis and not under court order. The admitting diagnosis was dysthymic disorder, borderline personality disorder, severe psycho-social stressors, poor level of functioning. (Exhibit 4).

On June 28, 1983, a request for extended inpatient hospitalization from June 7th, 1983, through October 6th, 1983, was submitted to OCHAMPUS (Exhibit 3, page 1). Information was requested by OCHAMPUS (Exhibit 20) and additional information was provided including a letter written by Dr. Stuart M. Wyckoff, the beneficiary's attending psychiatrist (Exhibit 22). He described the patient's past treatment history as follows: "The patient has a lengthy history of psychiatric disability, including poor school performance, poor choice of friends, resentment of authority, self-destructive acting out behavior, depression and low self-esteem, difficulty getting along with her family, sexual promiscuity. There have been numerous attempts to help the patient in the past, including foster home placement, outpatient group psychotherapy, a group home, a psychiatric hospitalization for approximately 3 months a year and a half ago, and a residential treatment center placement for 14 months last year." He based his request for a 4 month extension of inpatient hospi-

talization "on the well documented tendency of the patient to use extremely poor judgment in stressful situations and to so poorly control her impulses that she repetitively places herself in positions to be harmed personally, academically, socially and familially. Without intensive inpatient psychiatric hospitalization, it is unlikely that the patient will be able to make the types of changes in herself necessary to assure both her well being immediately and her making use of less intensive treatment on an outpatient basis at a later date. The fact that the patient has already been involved in numerous less intensive treatment modalities (and still has serious psychopathology) attests to the need for long-term, intensive inpatient hospitalization. The patient's extreme difficulty establising trusting relationships with significant adult authority figures, her poor judgment and impulse control, and her own low self-esteem all predict (with some assurance) a fairly long, difficult course of treatment.

In this same letter Dr. Wyckoff describes her condition and progress as being more depressed at the time of his correspondence that at the time of her admission which, in his opinion, was "the first indication of real progress in the treatment program." The patient was described as not particularly difficult to manage and overt acting out behavior was not a major problem because the patient had learned very well to defend herself using intellectualization and rationalization which also resulted in keeping others at a distance. "Her superficiality and shallowness have been major therapeutic issues in her individual psychotherapy. In her family therapy, she has been dealing with intense primitive rage towards both of her parents and with the relationship between this intense feeling and her own feelings of low self-esteem." He states that her academic functioning has improved in the structured setting and her ability to utilize her leisure time has minimally improved. At the time of this correspondence Dr. Wyckoff still feels some concern over her relationship with peers and concluded the patient still had several problems at the end of 60 days of inpatient hospitalization which must be improved before it would be reasonable to expect her to succeed in an outpatient treatment program. She would "need to be able to tolerate frustration much more appropriately and control her impulses prior to being able to function in a less intense setting without jeopardizing her well being. This will be accomplished by the behavioral controls of the unit mileiu with continuous feedback to the patient about her behavior and the effect it has on others and with immediate and appropriate rewards and consequences for appropriate behavior. Individual psychotherapy will be used to address some of the problems she must deal with and group therapy will provide her some peer feedback.

The second problem Dr. Wyckoff felt needed to be dealt with before discharge was poor use of her leisure time. The hospital program would help her deal with that because of the diversified program to expand her leisure interests and skills, increase her self-esteem and channel her aggressive drives in a more appro-

priate fashion. Dr. Wyckoff also felt it was necessary to address the patient's intense rage as to both her mother and father with weekly family therapy sessions and individual psychotherapy. The patient's problems with resentment and authority needed to be dealt with within the behavioral structure of the unit and in individual therapy sessions in order to find a workable solution for her. Problem No. 5 to be addressed was the patient's depression and low self-esteem, with assistance in individual psychotherapy and the diversified daily activity program on the ward. The sixth problem was her poor peer relationships and the need to involve her in daily group psychotherapy to allow her to express her feelings and relate to peers in a reciprocal fashion rather than a provocative, seductive manner. Dr. Wyckoff concludes in his letter that the hospital setting is required; "The request is submitted based on the finding that the patient was not able to be successfully treated in any less intense setting due to the severity of her psychopathology and that she presents a reasonable likelihood of being harmful to herself (based on her extremely poor judgment and impulse control, low self-esteem and lack of regard for herself) if untreated." (Exhibit 22, page 3).

The material submitted in connection with the request for waiver of the 60 day psych limit was sent to the American Psychiatric Association Peer Review Project for review. The peer reviewers' comments are contained in the hearing file under Exhibit 23. In response to questions on the review form, the reviewer found the patient's condition did not require 24 hour surveillance or services that could not be rendered on an outpatient basis or partial hospitalization. As to the question whether the patient's presenting mental disorder could be expected to have a short (30 days or less) and relatively severe course, the reviewer answered no. In response to the question whether the documentation established that the patient posed an imminent risk to self or a danger to others, the reviewer answered no, "Not imminent". No medical complications were found by the reviewer which would require 24 hour acute inpatient hospital services and active medical treatment and he found the record did not document that the services which were provided were of an intensity and nature that were generally recognized as being effectively and safely rendered only in an inpatient hospital setting; finding a more appropriate setting would have been a residential treatment center. When asked if the documentation established that the patient could be expected to progress to discharge or transfer to a lower level of care (partial hospitalization, RTC, outpatient) during the period of time in excess of 60 days, the reviewer stated the documentation was not adequate and in addition, the reviewer found the documentation did not establish the reasonableness of the number of days requested with this comment: "This patient clearly needs structure. This does not have to come from an acute hospital. The alternatives include (1) RTC (2) day treatment. There is no discussion of the reason for the failure in the prior RTC treatment. It is unclear as to whether the mother is being helped to structure the home situation. If the patient needed only 30 days beyond

the 60, then an extension would be reasonable. If more time is required, it can be provided in an RTC. Since the request is for an extension for 4 months it would appear that the RTC would be most appropriate."

The request for extended hospitalization was denied by letter dated August 12, 1983 (Exhibit 24). In response to this denial Dr. Wyckoff again wrote to OCHAMPUS. He asked for a reconsideration of the denial and stated "The information submitted clearly indicated that the patient had been involved in numerous different forms of treatment over the past several years (including outpatient therapy, brief acute hospitalization, longer term hospitalization, extremely long term residential treatment). Despite all these different therapeutic interventions, the patient remained extremely depressed, mistrustful and repetitively self-destructive. It would appear to me that this would clearly indicate that longer term inpatient hospitalization was the treament of choice and that the necessary services could adequately only be provided in a hospital setting." He also pointed out the self-destructive nature of the patient and although she was not actively suicidal, she resorts to self-destructive acting out behavior (substance abuse, sexual promiscuity and dangerous risk taking behavior) to cope with her depression and low self-esteem. He expressed a serious concern about her safety on an outpatient basis and states: "Even if I agreed that a residential treatment center would be an appropriate alternative (which I do not), that is a moot point for two reasons: there is no residential treatment center available in the Reno area suitable for providing appropriate care; sending the patient away from home to a suitable center would eliminate any regular family therapy (essential in this case)."

In this same letter Dr. Wykcoff addresses a more general issue regarding the 60 day psychiatric limitation and its inappropriateness as regards adolescents and their treatment. He states it is generally recognized in treating adolescents that they are often not capable of expressing their depressions and do not actively attempt suicide but instead act out their feelings by repetitively putting themselves in situations in which they can be harmed or harmful to others. He feels that the CHAMPUS guidelines now require that they must actually try to kill themselves "before it is recognized that they are severely disturbed and in need of major therapeutic intervention. In addition, it is exceedingly rare for an adolescent to initially recognize his or her need for help and to actively seek that help. Most often, the adolescent's destructive acting out behavior is a plea for intervention which must be recognized by a mature, responsible adult in the child's environment. It is not uncommon for severely disturbed adolescents to fight against the very help that they desperately need for an extended period of time (often well exceeding the sixty days allotted by CHAMPUS). As I currently understand the CHAMPUS regulations set forth, it would appear to me that only adolescents who immediately attempt suicide and homicide and equally quickly recognize their need for

help are eligible to be hospitalized and obtain any therapeutic benefit in treatment."

The patient's mother also sent a letter asking that the denial of extended hospitalization be reconsidered. She wrote that she and the patient's father were divorced in 1977 and the patient's two older sisters went to live with their mother in California while the patient and a younger brother lived with their father in Virginia. During the two years that followed the divorce, the patient's behavior became increasingly disturbed. She started smoking marijuana and, because of the deterioration in her behavior, it was decided in the fall of 1979 she would go to live with her mother. Within the year her behavior in school "began to be destructive". In July, 1980, family counseling was started which her mother said seemed to have no effect. She then took her to a psychologist but her behavior became even worse. She was suspended from school twice, once for her disrespectful and uncooperative attitude and poor school performance and the second time for intimidating another student whom she had beaten up the previous week. The probation department of Juvenile Court held her in custody for the assault and also on two other occasions when she was a runaway. Her mother described her behavior as totally beyond any control. She refused to go to the psychologist, was "dangerously involved with drugs including LSD, barbiturates and alcohol, had become sexually active and was truant from school a great deal". All this occurred before she was 13 years old. In March, 1981, the patient took an overdose of Tylenol and at that point her mother felt she needed institutional care. She was placed in a group home where she was visited weekly by a County Mental Health placement worker and received some counseling from the on-duty social worker at the home in addition to weekly family sessions. During this period she continued to smoke marijuana and was raped by an outsider. In August, 1981, the mother and sisters moved to San Diego and the patient ran away from the group home and her whereabouts were unknown for several months. When she was located by the police she was committed to a psychiatric hospital where she remained for 3 months. From there she went to a residential treatment center for emotionally disturbed adolescents in December, 1981. She remained in the RTC for 13 months and in this letter her mother stated: "I felt made a great deal of progress during her 13 months there. She received regular counseling, both in group and individual basis, saw a psychiatrist weekly and we had almost weekly sessions together with the Social Worker. It was a much more structured environment, and one she needed. I felt optimistic." In January, 1983, at the age of 15, she was discharged from the RTC, "primarily because she had come to a standstill and the general feeling was that a home environment together with continued weekly sessions with her psychiatrist might prove beneficial. She appeared to be doing well, but was uncommunicative." Her mother describes the incident which led to her daughter's admission to Truckee Meadows Hospital: "I couldn't believe it but was still on 'Self-Destruct'!" At the time the letter was written (November 19, 1983) the patient's mother was optimistic she had received

the kind of help in the hospital which would allow them to have some real hope for her treatment on an outpatient basis.

The letters from Dr. Wyckoff and the patient's mother, along with the medical file were submitted to the OCHAMPUS Medical Director, Dr. Alex Rodriguez, for peer review. He found the patient was appropriately treated during the first 60 days of inpatient hospitalization and that the treatment goals were appropriate. He also found there was nothing in the record to indicate the patient was suicidal and since it was clearly the intent of Congress to limit the inpatient level of care for psychiatric services to 60 days, he agreed with the APA Peer Reviewer that this patient did not meet the criteria established by the CHAMPUS policy. She was not a danger to herself or to others nor did she have a medical complication that could only be treated in an inpatient setting. He concluded: "The patient did in fact have a bonafide psychiatric disorder that required psychiatric treatment in some sort of structured setting and the appropriate level of care after the 60 days of hospitalization would have been a return to a residential treatment center". (Exhibit 28)

The OCHAMPUS formal review decision was issued January 19, 1984. This decision denied inpatient care beyond 60 days because the care rendered to the patient did not meet the criteria for extended care in that there were no medical complications nor was the patient a risk to herself or others at or around the 60th day of hospitalization. In addition, the formal review decision found the services were above the appropriate level required to provide necessary medical care in that both the APA Peer Reviewer and Dr. Rodriquez found that an appropriate level after 60 days would have been residential treatment care rather than an acute hospital setting. The first 60 days of inpatient hospitalization and related medical care were approved as they were found to be medically necessary and rendered at the appropriate level.

Upon receipt of the formal review decision, the beneficiary's mother requested a hearing and submitted another letter from Dr. Wyckoff in which he stated: "The patient was not adequately improved by sixty days -- the same psychodynamic factors that made her dangerous to herself on admission still existed until the time of discharge". He also protested that the decision did not address the issue of the vagueness and interpretation of the phrase "dangerous to herself and others". (Exhibit No. 30).

Upon receipt of the request for hearing, OCHAMPUS wrote to the Medical Records Department of the hospital and requested progress notes, discharge summary, consultation reports, admission summary, lab, x-ray, physician's orders, physician's progress notes, group and family notes, extended stay evaluation conference, other therapy notes and the utilization review committee review of services, if any. (Exhibit No. 32) Information which was available was provided and OCHAMPUS was advised that the

physician's progress notes were included in the multidisciplinary progress notes (Exhibit 33).

This additional medical information was again presented to Dr. Rodriquez. In his review he states: "I would concur with Dr. Wyckoff's evaluation that this beneficiary did have a significant emotional disorder; that was previously reflected in my comments, and that she was in need of what would be an inpatient level of care. That is - continuous, supervised, structured 24 hour professional psychiatric care. I would also concur with the general treatment goals that had been spelled out in the initial and extended treatment plans." (Exhibit 35) He has no question about the professionalism comprehensiviness or intensity of the services provided and continues: "The issue is; could the care have been equivalently provided and at a longer term facility such as a residential treatment center". He answers that question yes. He describes CHAMPUS authorized, JAH accredited, residential treatment centers and concludes that such a facility would be "adequate to meet the psychiatric needs of this beneficiary". He concurs with the APA reviewer in that there is no medical evidence, even that additionally submitted, which would document that the patient's emotional conditions were so severe as to require the acute inpatient level of care. "In fact she, because of her threatening behavior and her tendency to act out was of some risk to herself; however the risk was not so great that only the acute inpatient level of care would be adequate to treat her. Inpatient level care would in many facilities, not in all acute inpatient care facilities, provide a greater level of chemical, physical, and professional staffing restraint for a person who was severely out of control to impose some real and present danger to himself or herself. In such a setting as an acute inpatient care facility, regular seclusion and restraint, would be available, whereas a high level of physical restraint would not generally be possible in most residential treatment centers and would only generally be available in certain intensive settings in the acute care facility. So, in effect what I'm saying is that only with the exception of the imminently behaviorally manifest individual who has significant physical aggressiveness or self-harming behaviors due to psychotic or other kinds of processes, that we would not consider an RTC able to handle those situations. This beneficiary, as I went through these records again thoroughly, did not at any time manifest such a state of discontrol, a threat to herself or others that those behaviors could not be handled in CHAMPUS RTCs. I would disagree with Dr. Wyckoff's summary of 23 August 1983, that the previous RTC was unsuccessful treatment. It is evident from the record that this beneficiary was successfully treated at least for some period of time before she decompensated, that is to say had a regression in her behavior following significant family changes which were, in effect due to a lack of outpatient follow-up. In addition, following that RTC treatment, she did manifest some subsequent acting out behavior that did initially require some acute inpatient level care treatment."

In response to the question as to whether the patient was a significant danger to herself and others at approximately the 60th day of hospitalization, Dr. Rodriguez answered as follows: "I would ascertain that her behavior as reflected in the records did indicate that she was a significant risk to herself and possibly a danger to others by virtue of her tendency to act out against herself primarily and potentially to be [illegible] towards others. So, I would ascertain that she [illegible]icant enough risk that she would have required some supervised, structured 24 hour psychiatric care." The reviewer found the first 60 days of inpatient care to be medically necessary and appropriate and that the patient had a significant emotional disorder that did require some intensive and comprehensive level of professional services and, although he felt that an argument could be made she should have been admitted immediately to a residential treatment center, Dr. Rodriguez found it was within the standards of medical care in the United States for her to have been admitted to an acute care facility. He concluded that, although the first 60 days were necessary and appropriate care, that after the 60th day of hospitalization the patient did not require the acute inpatient level of care but could have been treated in an RTC. He also found she did not have any medical complications requiring continued inpatient hospitalization and pointed out that on Congressional mandate, CHAMPUS can only pay for acute inpatient mental health care beyond 30 days in extraordinary circumstances and concluded the patient did not meet this criteria (Exhibit 35).

Dr. Stuart Wyckoff who had been the beneficiary's admitting physician was unable to attend the hearing because of impending surgery. Dr. Jim Lippert, a psychologist, did attend the hearing and testified Dr. Wyckoff was the treating physician who was responsible for the ward care, including group therapy, and he also saw the family once a week in family therapy. The patient was seen by Dr. Lippert as the individual therapist on a twice a week basis. It was Dr. Lippert's testimony that, at the time the patient was initially evaluated by him at juvenile hall and hospitalization was recommended the extent of her underlying illness was not available to them because of her verbal abilities to put up a facade which masked her true illness. He felt the real reason Dr. Wyckoff anticipated her stay as lasting only 3 or 4 months originally was because they didn't realize how seriously disturbed the patient was. His opinion was that the patient had been prematurely discharged from Truckee Meadows Hospital because just prior to discharge her facade was first beginning to crumble and some meaningful treatment had been initiated. He saw her for a brief period of time after discharge as an outpatient but at the time of the hearing she had returned to the same position she was in prior to hospitalization and the level and intensity of the outpatient treatment was not effective. It was his opinion in his testimony at the hearing that a residential treatment center would not have been effective because the initial residential treatment center had not treated the patient's underlying disturbance but had only dealt with her at the level she presented herself; with the

ability to mask her real concerns and feelings. He rejected discharge to a residential treatment center for two reasons, the first was that the patient needed the intensity of treatment that is available only in inpatient psychiatric hospitals and felt her subsequent regression and deterioration after discharge substantiated that concern. The hospital staff ratio is much higher, the nurses are more highly trained, there is more monitoring and intense "pushing" confrontation in a hospital that is not provided in a residential treatment center. This allows them to put pressure on the patient to get behind her facade. The second reason he gave was that it was imperative the family be involved in treatment and since there was no residential treatment center close enough for the family to be involved, it just would not have been a viable alternative. He said that, at or around the 60th day of hospitalization, the patient was clinically depressed in response to a question from Ms. Rediger but stated that at no time had she been on suicide prevent or one-to-one observation while she was in the hospital. As to whether she was a danger to herself or others, Dr. Lippert testified he did not feel she was in danger of commiting suicide but that is not the typical way adolescents deal with their depression. He felt she was a danger to herself in that her lifestyle was very self-destructive for one so young and that her depression was taking the form of acting out. The danger to herself was her behavior. She was involved in drug abuse, poor relationships with boys, poor school performance, and her only goal was to have a good time, which resulted in behavior that was very inappropriate and destructive.

The beneficiary's mother testified that within a very short period of time after her discharge from Truckee Meadows Hospital the patient was engaging in the same sort of behavior she had before hospitilization and was pretty much right back to where she had been before. This is the same pattern that occurred at the end of her 14 month stay in a residential treatment center in San Diego. Her mother took great issue with Dr. Rodriquez' statement in Exhibit 35 that the patient had been successfully treated in a residential treatment center and that her present illness was decompensation or regression. The mother testified the treatment in the residential treatment center had not been at all successful; that she was discharged in the same condition she was in at admission, only she had learned essentially to become a "con artist". The reason she was discharged from the PRTC was that the psychologist, the social worker, the counselors and the psychiatrist who were seeing her all felt no progress was being made and that maybe discharge to her home would help her while she continued to see Dr. Charles Marsh, the psychiatrist who had been seeing her on an outpatient basis during her RTC stay. She testified that within 2 weeks of discharge her daughter was back on drugs, having school problems, running away, etc.; even though the family was going for counseling. Her mother testified that because of the premature discharge from Truckee Meadows, necessitated by the denial of CHAMPUS benefits, that the patient was back where she had been prior to hospitalization. Both she and her husband were of the opinion

that the patient was a danger to others, especially to her mother. She was capable of hurting people and had assaulted her mother since her discharge.

ISSUES AND FINDINGS OF FACT

The primary issue in dispute is whether the care provided the appealing party was provided at the appropriate level for medically necessary care and whether the requirements of the CHAMPUS criteria were met for extension of psychiatric hospital benefits beyond 60 days. Secondary issues which will be addressed include the issues of 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 3 provides in pertinent part: "In addition to any definitions, requirements, conditions and/or limitations enumerated or 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..."

On December 21, 1982, the Department of Defense Appropriation Act of 1983 was enacted (Public Law 97-377, 96 Stat. 1930) Section 785 of the Act provides as follows:

> "Sec. 785. None of the funds appropriated by this Act shall be available to pay claims for inpatient mental health services provided under the Civilian Health and Medical Program of the Uniformed Services in excess of sixty days per patient per year. Provided, that the foregoing limitation shall 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 medically psychologically necessary reasons; or (e) provided pursuant to a waiver for medical or psychological

necessities, granted in accordance with the findings of current peer review, as prescribed in guidelines established and promulgated by the Director, Office of Civilian Health and Medical Program of the Uniformed Services."

In March, 1983 the Director, OCHAMPUS, issued the following guidelines for waiver of the sixty-day inpatient limitation:

"a. The Director, OCHAMPUS, taking into account the findings of professional review, will grant coverage in excess of 60 days of inpatient mental health services in a calendar year if the Director finds that;

"1. The patient is suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which results in the patient being put at a significant risk to self or becoming a danger to others; and the patient requires a type, level, and intensity of service that can only be provided in an inpatient setting; or

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

It is clear that Congress by the Department of Defense Appropriations Act of 1983 (Public Law 97-377, Section 785) intended to limit inpatient mental health services under the CHAMPUS program to 60 days per year unless the services were provided under the program for the handicapped, as residential treatment care, as partial hospital care or a waiver was granted in accordance with peer review and the guidelines promulgated by the Director of OCHAMPUS. It is the last condition for waiver in the Act that is applicable to this hearing. The guidelines issued by the Director, OCHAMPUS, in March, 1983, allow extended coverage in excess of 60 days of inpatient mental health services in a calendar year if "the patient is suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which results in the patient being put at a significant risk to self or becoming a danger to others; and the patient requires a type, level, and intensity of service that can only be provided in an inpatient hospital setting". The second reason for granting an extension to the 60 days limitation would be if the patient had medical complications that could only be treated in an inpatient setting. The second guideline is not applicable to this hearing.

A previous final decision dealing with the issues involved in the waiver of the 60 day inpatient mental health care limit has been issued by the Assistant Secretary of Defense for Health Affairs (OASD (HA) 83-54). A copy is in the hearing file as an attachment to Exhibit 38. The history of the psych limitation

in the Department of Defense Appropriation Act is discussed in this decision and it is pointed out that the 60 day limit is the same as the Blue Cross/Blue Shield High Option Insurance Plan for federal employees, after which CHAMPUS originally patterned. The Senate Committee's report states as follows: "The Committee recommends bill language limiting the length of inpatient psychiatric care to 60 days annually, except when the Director of CHAMPUS or a designee waives the limit due to extraordinary circumstances". Senate Report 97-580, page 30.

It is the position of OCHAMPUS, which is shared by the two psychiatrists who have reviewed this case for purposes of peer review, that the first 60 days of inpatient care for this patient's mental illness was medically necessary and appropriate and should be cost shared by CHAMPUS. Care beyond that initial 60 day period is what is in dispute in this hearing. At the hearing Ms. Rediger stated it was the OCHAMPUS position, based upon the hospital records, the physician's notes, and the peer review, that at or around the 60th day of hospitalization the patient was not a significant risk to herself or a danger to others. She empnasized that it had to be a current risk and not a future or potential risk, relying on the final decision quoted above. In addition it was the OCHAMPUS position that, pursuant to DoD Regulation 6010.8-R, Chapter IV, G.3, the care provided was above the appropriate level required to render medically necessary care.

I have carefully examined the record and find it does not document the beneficiary posed a significant danger or risk to herself or others at or around the 60th day of inpatient hospitalization. Her mother and the attending psychologist at the hearing, and the attending psychiatrist by written correspondence, have indicated that the self-destructive lifestyle which the patient leads when at home, even with outpatient therapy, poses great danger to her. The patient's mother testified that every psychiatrist who had examined her daughter personally said she was not ready for discharge and it was impossible to look at the records alone and tell her condition. Her mother felt her condition was acute even though it may or may not have been reflected in the records. If you examine the medical records which were kept contemporaneously with the care, one must agree with the patient's mother. It is difficult, if not impossible, to find extraordinary circumstances which would necessitate a waiver of the 60 day psychiatric limitation. The physician's orders, Exhibit No. 6, page 4 through 12, show that the patient was restricted to her room on several occasions; that she was treated with medication for skin rash, hives cough (possible allergy). No anti-depressants or other psychiatric drugs were given and the physician's orders show she suffered only relatively minor physical ailments while in the hospital.

The progress notes are contained in Exhibit 5. Approximately twice a week entrys are included by Dr. Wyckoff who saw her 4 days a week in daily rounds and group therapy and for 1 hour a week in family therapy. The notes are very brief and if one

examines them around the 60th day of hospitalization they don't document any great concern regarding the patient's depression and/or self-destructiveness at that time. The one written on May 31st states the patient "has been trying to look where her anger for her mother comes from and to find appropriate ways of expressing these feelings without becoming hostile and belligerent". The one written on June 3rd states that she "continues to verbalize excellently in her treatment program, without being able to make any meaningful changes in her behavior or unconflying personality. An effort is being made to confront the superficiality of her work". The note written on June 7th (the 61st day) states only that there had been no change in the patient's status over the last several days.

Dr. Lippert saw the patient for individual therapy and he also wrote approximately twice weekly notes in the chart describing the patient as he saw her during therapy and the problems with which she was struggling. Around the last week in May the patient was on room restriction and Dr. Lippert's note describes the patient's concern regarding her relationship with her mother and her fear of losing her. "Worried Mom will think she is bad and will act that way saying she wants one thing and does the opposite". The next note on May 30th again discusses the patient's feeling toward her mother and her performance in group and "how she focused on others and made poor choices" which was the opposite of what she said she wanted to do. The note on June 2nd states that the patient was struggling with being phony to self and others and having difficulty telling central problem, along with being impatient to figure out how to resolve the problem of her relationship with her mother. The June 6th note reports that although the patient describes herself as irritable for the last few days and "feeling like lashing out at others" there was an inconsistency between her behavior and what she said. Also the patient was aware she was being phony during the last few days.

The nursing and other therapy notes around the 60th day of hospitalization show the patient was pleasant and compliant remaining on task without difficulty or problems (Exhibit 5, page 49). She was seen by a recreational therapist and "participated fully although her mood appeared flat and sullen". She socialized with select peers and smiled when interaction was initiated with staff. She is reported quiet and concerned about whether sharing her feelings would help her on June 1st, 1983, but other notes show that she showed good judgment in refusing to engage in a gossip session. (Exhibit 5, page 52) There are some descriptions of low spirits with minimum socialization but other notes describe the patient's outlook as bright and cheerful, pleasant and cooperative with appropriate socialization with select peers. I think it is fair to say these records show that her socialization with peers on the ward was minimal at times and at other times was more active. As described by Dr. Wyckoff in his correspondence, the patient was not a problem on the ward and had learned to adjust. While I understand this description of the patient's facade the progress notes written

contemporaneously with treatment by Doctors Lippert and Wyckoff and the other staff do not show the "extraordinary circumstances" which would necessitate a waiver of the 60 day psychiatric limitation. They do show the patient's resistence to entering into any meaningful treatment, but they do not document the patient was a significant imminent risk to herself or to others. At the hearing I asked the patient's mother if she would attempt to obtain some notes taken during the family therapy sessions. In response to this request Dr. Wyckoff submitted a summary of the family therapy sessions (Exhibit 40). These show that around the end of May and the first part of June, 1983, the patient was willing to talk about the anger she felt in relationship to her mother but was only gradually moving towards examining the full extent of that anger.

The American Psychiatric Association peer reviewer found that at or around the 60th day of inpatient hospitalization the patient's condition did not require services that could not have been rendered on an outpatient basis or partial hospitalization and that the patient posed no imminent risk to self or danger to others. In his comments the reviewer said the patient clearly needed structure but this did not have to come from an acute hospital setting. He was concerned there was no discussion as to why prior RTC treatment had appeared to be a failure and if the patient only needed 30 more days of acute hospitalization, maybe he would have found an extension to be reasonable. Since the extension was requested for an additional 3 months, he felt an RTC would be a more appropriate level of care. Dr. Lippert testified at the hearing he knew Dr. Wyckoff had contacted the psychiatrist who had treated the beneficiary during her previous stay at the residential treatment center, but he did not know what information had been received and there is nothing in the records documenting information received from this phone contact.

Dr. Rodriquez, who is a board certified child psychiatrist, in his first peer review of this case agreed with the APA peer reviewer that the patient did not meet the CHAMPUS criteria for extension of inpatient care for mental health services beyond 60 days in that she was not a danger to herself or others nor did she have medical complications that could only be treated in an inpatient setting. He found though that she"did in fact have a bonafide psychiatric disorder that required psychiatric treatment and some sort of structured setting and the appropriate level of care after the 60 days of hospitalization would have been a return to a residential treatment center". (Exhibit 38) Dr. Rodriquez reviewed the file a second time after additional correspondence and material was received and in this review it was still his opinion that the patient had a significant emotional disorder and "because of her threatening behavior and her tendency to act out was of some risk to herself; however the risk was not so great that only the acute inpatient level of care would be adequate to treat her". His conclusion was that after the 60th day of hospitalization the patient did not require the acute inpatient level of care but could have been

treated in an RTC since the congressional mandate was that CHAMPUS only pay for acute inpatient mental health care beyond 60 days in extraordinary circumstances and it was his opinion that the patient did not meet this criteria.

After careful review of the record, I concur with the peer reviewers. The testimony at the hearing and the material in the file shows this is a very disturbed young woman with extremely serious continuing problems who has been treated with various approaches and is still suffering from serious psychopathology. My decision does not concern whether or not the patient should have remained at Truckee Meadows Hospital beyond the 60 days as that is clearly a decision that must be made between the patient and her family and the treating physician. Both Dr. Wyckoff and the patient's mother and step-father testifying at the hearing, stated that the patient was just beginning to make some real progress, outside of the facade she maintained, at the time when she was discharged. I am certainly not disagreeing with this observation nor am I deciding she should not have remained in the hospital. It is very possible, as her physician and her mother maintain, this would have been the best method of treatment for her. Dr. Wyckoff has made an eloquent presentation of the dynamics of adolescent treatment with their inability to ask for help and resistance to actually becoming involved in the treatment process. The progress notes document this resistance and also the facade the patient had developed to aid in her resistance. While I might agree that different standards should apply, Congress did not elect to treat adolescent children or adults in a different manner when appropriating funds for psychiatric inpatient hospitalization and related care.

As Hearing Officer I am bound by the specific mandate of Congress in appropriating funds for the CHAMPUS program and it is that inpatient mental health benefits will be limited to 60 days per year unless certain specific criteria are met, and the congressional committee notes indicate that Congress invisioned an extension waiving this limitation only in "extraordinary" circumstances. The regulatory provisions for waiver of coverage is that, based upon professional review, the patient be a significant risk and/or danger, requiring an intensive level of service which can only be provided in an inpatient setting. Both of these conditions must be met. The peer reviewers agreed the patient did need an inpatient structured setting but something less than the intensive inpatient psychiatric hospital. Although Dr. Rodriguez found the patient was "of some risk to herself," both peer reviewers concluded the patient was not a significant risk to herself or others around the 60th day of hospitalization requiring an acute inpatient level of care and it is my opinion the medical records support this conclusion.

I am aware that Dr. Lippert at the hearing, and certainly Dr. Wyckoff in his letter, made a strong argument that the suicidal/homocidal behavior we associate with "danger to self and others" is not the way adolescents behave but rather they show

their depression by acting out and engaging in long term self-destructive behavior. The final decision quoted above adresses that issue and discusses the standard that must be applied.

> "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/homocidal 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/homocidal 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 requires inpatient hospital care. It is, of course, incumbent upon the appealing party to demostrate the patient represented such a risk that could not be treated in other than an acute level." OASD (HA) 83-54, page 9.

In this same final decision the attending psychiatrist had argued that while the patient might not be a current risk, the adolescent beneficiary was a potential or future risk. The assistant secretary of Defense addressed that argument as follows:

> "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 as suggested by OCHAMPUS and the Hearing Officer herein. 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." (page 9)

The patient's hospital stay in this case was without any serious incidence explained to a great extent by the fact the patient had learned how to behave in an institution. My interpretation of the peer reviewers' comments, and to a certain extent even those of Drs. Wyckoff and Lippert, is that the patient was no current or imminent risk but that eventually her acting out behavior might be dangerous to her. The peer reviewers concluded that this potential risk could be dealt with and treated in a residential treatment center and, given the statutory mandate, I concur.

Dr. Lippert testified that a residential treatment center was not considered because there were none available in the area and it was his and the treating physician's opinion that it was imperative the family be involved in the treatment of this patient. Dr. Rodriquez, in his peer review, states "The possible outcome of discharge does not necessarily validate that the results could only have occurred in the acute inpatient level of care. It is reasonable that any professionally responsible long term care treatment facility involving the family would have been successful." In addition the physician's notes discussed above are concerned mostly with the patient and her relationship with her family, most particularly with her mother. For these reasons I conclude that any treatment for this patient needed to be given where the family could be involved and anything less than that would not be responsible medical care. Not only did Dr. Lippert testify that there were no residential treatment centers in Nevada but the patient's mother had done extensive research on this and the closest RTC would have been in either Wyoming, California, Colorado or Texas. It is clear it would have been very difficult, if not impossible, to involve the family in the treatment of this patient so far away from home.

The CHAMPUS Regulation, Chapter IV-B, provides institutional benefits and in paragraph (g) provides as follows:

> "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. If an appropriate lower level care facility would be adequate but is not available in the general locality, benefits may be continued in the higher level care facility but CHAMPUS institutional benefit payments shall be limited to the reasonable cost that would have been incurred in the appropriate lower level care facility, as determined by the Director, OCHAMPUS (or a designee). If it is determined that the institutional care can reasonably be provided in the home setting, no CHAMPUS institutional benefits are payable."

The peer reviewers in this case both found that a residential treatment center or lower level care facility other than the inpatient psychiatric hospital would be adequate to treat the patient. The record is also clear there was no RTC in the general locality. The professional review found the patient needed a structured, monitored environment providing essentially 24 hour a day care but that it could have been adequately provided by a residential treatment center. It is my decision that under Regulation IV.B.g. care for this patient which was continued at the higher level care facility should be paid at the reasonable cost level that would have been incurred in a residential treatment center and I would ask the Director, OCHAMPUS, to make that cost determination.

The enabling legislation for CHAMPUS benefits require that the care be medically necessary and the CHAMPUS Regulation defines medically necessary as "services rendered at an appropriate level of care". In addition, the Regulation provides that institutional benefits will be provided only for services for which it is medically necessary that they be rendered at an acute care facility.

I don't believe an extensive discussion of this statutory and regulatory requirement is necessary because my previous discussion concerning the waiver of the 60-day psych limit is applicable to this requirement. Both peer reviewers were of the opinion that the care rendered to the beneficiary after 60 days could have been provided at a lower level of care and an acute inpatient psychiatric hospital was above the appropriate level required to provide medically necessary treatment and I concur with their recommendation. Again, following the provisions of Chapter IV-B.g., because there was no appropriate lower level care facility in the general locality and because this adolescent patient needed family involvement for any treatment to be effective, it is my recommended decision that CHAMPUS benefits be allowed at the reasonable cost that would have been incurred at the appropriate lower level care facility, in this case a residential treatment center.

SECONDARY ISSUES

RELATED CARE: This hearing not only involves the charges for hospitalization at Truckee Meadows Hospital but charges for the services billed by Dr. Wyckoff for himself as the attending psychiatrist and Dr. Jim Lippert as the patient's therapist. Chapter IV-G of CHAMPUS Regulation 6010.8-R provides specific exclusions and limitations to CHAMPUS coverage and paragraph 66 states: "All services and supplies...related to a noncovered treatment or condition". Since the inpatient hospitalization was a covered service through June 6, 1983, the related care provided by Drs. Wyckoff and Lippert should be cost-shared through that date. Although I have found the inpatient hospitalization after the 60th day is not a benefit for which CHAMPUS benefits can be paid at the acute level of care; because of the lack of a RTC in the general locality that benefits should be allowed at the reasonable cost of charges at a residential treatment center. Drs. Lippert and Wyckoff's charges as submitted after June 6, 1983, are those related to a level of care which is specifically excluded from the CHAMPUS Regulation and above the appropriate level required to provide medically necessary care. When patients are being cared for in a residential treatment center they still have access to the coverage provided for outpatient psychiatric benefits under the CHAMPUS Regulation as provided in Chapter IV-C.3.i. This provides that outpatient psychiatric benefits are generally limited to two sessions per week and it is my recommended decision that benefits be allowed during the period from June 7th through August 23rd for one individual therapy session and one family therapy session per

week. The hearing file documents that while the patient was hospitalized in a previous residential treatment center in San Diego she was seen on an outpatient basis by a psychiatrist. Given the description of the patient's illness and the comments of the peer review, it appears that, if a residential treatment center had been available locally in which the family could have been involved, it would have been medically necessary for the patient to continue outpatient therapy with Drs. Wyckoff and Lippert.

BURDEN OF PROOF

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 party has not met this burden as regards care at the inpatient psychiatric hospital level beyond the 60th day of hospitalization. The congressional mandate is specific and it is my decision that the regulatory provisions for waiver of the 60 day limit have not been met.

SUMMARY

It is the recommended decision of the Hearing Officer that inpatient psychiatric hospitalization of the beneficiary at Truckee Meadows Hospital from April 8th, 1983, through June 6th, 1983, be cost shared by CHAMPUS but hospitalization from June 7th to discharge on August 23rd, 1983, should be denied as it was above the appropriate level of care required for medically necessary treatment. I also recommend denial of a waiver for CHAMPUS coverage of inpatient mental health care beyond the 60th day in calendar year 1983 because the beneficiary was not suffering from an acute mental disorder or acute exacerbation of a chronic mental disorder which resulted in her being such a significant danger to herself or others that she could only be treated in an inpatient hospital setting. It is also my decision that the patient did require a level of care which could not be provided in the home setting but in a structured residential treatment center which was not available locally. Pursuant to Chapter IV.B.g of the regulation CHAMPUS benefits should be allowed at the reasonable charge which would have been incurred at a residential treatment center from June 7th through August 23rd, 1983.

It is my further recommended decision that the related inpatient psychiatric services rendered by Dr. Wyckoff and Dr. Lippert be allowed from April 8th through June 6th and that the services provided from June 7th to discharge on August 23rd were above the appropriate level required to provided medically necessary care and also were related care which was specifically excluded by the 60 day psychiatric limitation. Because I have found that the patient needed to be treated as a lower care facility and would have been eligible for two outpatient therapy visits per week, it is my recommended decision that the reasonable cost of

one family therapy session and one individual therapy session per week be cost shared by CHAMPUS during the period of June 7th through August 23rd, 1983.

Dated this 4th of October, 1984.

Hanna M. Warren
Hearing Officer

HMW/cb