7-01

DEPARTMENT OF DEFENSE

OFFICE OF CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

AURORA, COLORADO 80045-6900

JUN 17 1987

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) Case File 87-01
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS appeal OASD(HA) Case File 87-01, pursuant to 10 U.S.C. 1071-1102 and DoD 6010.8-R, chapter 10. The appealing party in this case is the participating provider, the treating psychiatrist at the residential treatment center. The appeal involves the denial of CHAMPUS authorization for cost-sharing of residential treatment center care provided from January 18, 1985, through May 15, 1985. The amount in dispute is $9,062.96 which represents the CHAMPUS cost-share.

The hearing file of record, the tape of oral testimony presented at the hearing, and the Hearing Officer's Recommended Decision have been reviewed. It is the Hearing Officer's recommendation that CHAMPUS coverage for the residential treatment center care provided from January 18, 1985, through May 15, 1985, be denied because the care was not medically necessary nor rendered at the appropriate level. The Hearing Officer also found that the beneficiary was not eligible for residential treatment center care because of his age. The Director, OCHAMPUS, concurs in the Recommended Decision as it relates to the issues of medical necessity and appropriate level of care and recommends adoption of that portion of the Recommended Decision as the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs). The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, concurs in the recommendation of the Hearing Officer and Director, OCHAMPUS, to deny CHAMPUS cost-sharing of the residential treatment center care provided the beneficiary from January 18, 1985, through May 15, 1985, and hereby adopts, as the FINAL DECISION, that portion of the Recommended Decision of the Hearing Officer that deals with the issues of medical necessity and appropriate level of care.

The Director, OCHAMPUS, advises that, at the time of the care in issue, CHAMPUS did not have a policy setting a specific age beyond which CHAMPUS coverage of residential treatment center care was no longer available to beneficiaries. Rather, CHAMPUS policy limited coverage of residential treatment center care to "children and adolescents." Although the Director concurs with the analysis of the Hearing Officer that the regulation provisions on adolescents properly can be interpreted to limit coverage of such care to beneficiaries under age 21, the Director recommends that the Assistant Secretary of Defense (Health Affairs) issue this FINAL DECISION formally establishing the interpretation of CHAMPUS policy regarding residential treatment center age limitations.

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to deny CHAMPUS cost-sharing of the residential treatment center care provided the beneficiary from January 18, 1985, through May 15, 1985. The decision to deny cost-sharing of the care in question is based on findings that the care was not medically necessary nor provided at the appropriate level. In addition, I concur with the analysis of the Hearing Officer that CHAMPUS coverage of residential treatment center care for "children and adolescents" was intended only for beneficiaries under 21 years of age.

FACTUAL BACKGROUND

The patient was voluntarily admitted to an acute care psychiatric hospital prior to his admission to the residential treatment center (RTC). When admitted to the RTC, the beneficiary was 22 years of age. The diagnosis on admission states:

> "Schizophrenia, paranoia type. The patient has experienced persecutory delusions in terms of people shooting at him. He describes, in detail, the people that are trying to get to him. He may have had auditory hallucinations although are not bothering him at the present time. His affect is flat. There seems to be evidence of preservation or echolalia when we are talking, and it is difficult for him to organize his thoughts to respond in a coherent fashion to questions and, as a result, there is extreme misinterpretation of what either myself or his parents are trying to say to him. There is increased social isolation and withdrawal."

The provider requested CHAMPUS preauthorization. The preauthorization request indicated that the beneficiary was improving slowly but symptoms still persisted and, in particular, the beneficiary's confusion made him incompetent to handle his own affairs, therefore, he continued to remain on conservatorship. The length of stay was estimated to be 4 to 6 months. The request for authorization of benefits was denied because RTC care was not considered medically necessary nor the appropriate level of care and because the beneficiary was considered too old for RTC care. The provider appealed this denial and requested a Formal Review Decision.

The Formal Review Decision was issued August 28, 1985. The decision denied CHAMPUS cost-sharing of the residential treatment center care for the beneficiary during the period of January 18, 1985, through May 15, 1985, because the care was not medically necessary nor at the appropriate level of care. Prior to issuance of the Formal Review Decision, the OCHAMPUS Medical Director, a board certified psychiatrist, reviewed the case file. It was his opinion that the residential treatment center level of care was inappropriate due to the beneficiary's age and the younger population of the residential treatment center. It was also his opinion that the beneficiary needed to be in a chronic long-term psychiatric facility with possible transition to a half-way house in 6 months.

The case file was reviewed once again just prior to the hearing by a reviewer from the American Psychiatric Association. The medical reviewer's opinion stated that the beneficiary should be in a setting where more adult behavior is in norm because many of the beneficiary's behaviors are regressive and adolescent-like. The reviewing psychiatrist felt that a residential treatment center setting fostered the beneficiary's regressive behavior. It was also this reviewer's opinion that the beneficiary was sicker than most people traditionally treated in a residential treatment center and that this beneficiary was chronically psychotic and had not been well controlled on antipsychotic medication.

PRIMARY ISSUE AND FINDINGS OF FACTS

The primary issue in this appeal is whether the care provided to the beneficiary at the residential treatment center was medically necessary and provided at the appropriate level of care.

In my review, I find the Recommended Decision adequately states and analyzes the issues, applicable authorities, and evidence, including authoritative medical opinions, in this appeal. The findings are fully supported by the Recommended Decision and the appeal record. Additional analysis is not required. The Recommended Decision is, therefore, accepted as the FINAL DECISION in this appeal.

SECONDARY ISSUE

The Hearing Officer, in her Recommended Decision, identified as an issue " . . . whether this beneficiary was eligible for residential treatment center care under the provisions of the CHAMPUS Regulation." With respect to this issue, the Hearing Officer found:

> CHAMPUS is not an insurance program where the parties are free to contract for whatever care is provided, but is a benefits program which is specifically authorized by the CHAMPUS Legislation and the Regulation published thereunder. The Regulation provides benefits for care in an institution known as a residential treatment center and, prior to September 14, 1984, this was defined as a total therapeutically planned, group living and learning situation for round the clock, long term psychiatric treatment of emotionally disturbed children. As of that date the definition was broadened to include not only children but adolescents. There is a great deal of material in the CHAMPUS Regulation pertaining to the requirements, guidelines, etc., for residential treatment centers and all of them refer to children. Chapter IV B.4(e) bears repeating where a residential treatment center is defined as "a facility, or a distinct part of a facility, that provides to children and adolescents a total twenty-four hour therapeutically planned group living and learning situation where distinct and individualized psychotherapeutic interventions can take place." This is why both peer reviewers felt that an RTC was not an appropriate placement for this young man, because in their experience and orientation a residential treatment center is for children and adolescents.
>
> This patient was twenty-two years old when he was admitted to the RTC and turned twenty-three during the course of his treatment. Although the Regulation does not define adolescent, it is my opinion that all the accepted definitions of that term would exclude someone who is (twenty-two or twenty-three) years old. Children of CHAMPUS beneficiaries are denied coverage after twenty-one years of age unless they fall into one of two categories (DoD Regulation

> 6010.8-R, Chapter III B.2.(3)). I assume the beneficiary in this hearing is eligible for CHAMPUS coverage because of continuous mental incapacity prior to his twenty-first birthday and being dependent on his retired father for over 50% of his support. This regulatory provision indicates that by twenty-one he would be considered an adult which is a commonly accepted age, if not younger. Even though the patient is eligible for coverage because of an exception to the loss of eligibility at age twenty-one, he is still subject to the requirements and exclusions contained in the Regulation. The provider does not argue that this young man was an adolescent, but that this RTC treats young adults. I agree that young adult is the correct term to describe the patient. As Hearing Officer I have no authority to change the class of people eligible for RTC care in the CHAMPUS Regulation; they are children and adolescents, which this beneficiary is not. I am aware that the State of California has licensed this facility as a residential treatment center for people in an age group other than children and adolescents, but that cannot be the basis for my decision. I am bound by the language of the CHAMPUS Regulation and whatever the State of California chooses to do regarding licensing is not relevant to this decision.

After reviewing the Hearing Officer's Recommended Decision, I concur with her analysis and interpretation of the CHAMPUS regulation term "children and adolescents" as it pertains to the age limit of beneficiaries eligible for RTC care under CHAMPUS. That is, CHAMPUS residential treatment center benefit is limited to eligible beneficiaries under 21 years of age. This interpretation is consistent with the most restrictive of state laws which limit majority to individuals over 21 years of age. In order to avoid any unnecessary hardship on CHAMPUS beneficiaries, however, I have elected to make this interpretation effective the date of this FINAL DECISION.

Consequently, after the date of this decision, CHAMPUS will not approve or cost-share residential treatment center admission for beneficiaries 21 years of age or older. Beneficiaries who become 21 years of age while already admitted to a residential treatment center will not be authorized CHAMPUS coverage of RTC care beyond the date of their 21st birthday even if the patient remains eligible for other CHAMPUS benefits under CHAMPUS regulation (e.g., DoD 6010.8-R, chapter 3.B.2.d.(3).(b).)

All residential treatment center care for beneficiaries 21 years of age or older, authorized prior to the date of this FINAL DECISION, may be cost-shared by CHAMPUS provided the care is continuous, medically necessary and appropriate in accordance with applicable CHAMPUS laws and regulations, is not otherwise excluded from CHAMPUS coverage by law or regulation, and the beneficiary is an eligible CHAMPUS beneficiary in accordance with the CHAMPUS regulation (DoD 6010.8-R, chapter 3.B.2.d.(3)).

As a result of this determination, the Director, OCHAMPUS, is hereby directed to initiate an amendment to the CHAMPUS regulation which establishes an age limit for beneficiaries receiving coverage of RTC care under CHAMPUS. Although this decision selected an interpretation of "children and adolescents" which is compatible with the most restrictive state laws in determining majority, the Director, OCHAMPUS, should propose any age limit which is deemed reasonably appropriate to administration of the CHAMPUS benefit for RTC care. Pending final amendment of the CHAMPUS regulation, the Director, OCHAMPUS, is also directed not to issue any authorizations for residential treatment center care to beneficiaries who are 21 years of age or older on the date of admission to a residential treatment center and to deny authorization for residential treatment center care for beneficiaries when they attain the age of 21 years of age while in a residential treatment center.

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to deny CHAMPUS cost-sharing of the residential treatment center care provided the beneficiary from January 18, 1985, through May 15, 1985, as the care was not medically necessary nor provided at the appropriate level. The claims and the appeal of the provider are, therefore, denied.

Although the regulation does not define adolescent, I concur with the opinion of the Hearing Officer that a beneficiary who is 21 years of age or older is not an adolescent as that term is used in defining those beneficiaries eligible for residential treatment center care under CHAMPUS. Consequently, I have determined that the proper interpretation of the term "children and adolescents," as it applies to the CHAMPUS residential treatment center benefit, shall be individuals under 21 years of age pending amendment of the CHAMPUS regulation.

Issuance of this FINAL DECISION completes the administrative appeal process under DoD 6010.8-R, chapter 10, and no further administrative appeal is available.

David Newlette for William Mayer, M.D. 6/17/87

RECOMMENDED HEARING DECISION

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

Beneficiary:

Sponsor: USAF, Retired

Sponson'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 provider, Thom E. Noyes, M.D. The appeal involves the denial of CHAMPUS cost-sharing for residential treatment center care provided to the beneficiary at Rio Vista Residential Treatment Center, Reedley, California, from January 18, through May 15, 1985. The amount at issue in this hearing as the CHAMPUS cost-share portion is $9,062.96 (Exhibit 19). The sponsor's health insurance coverage through the Teamsters Union paid the charges for hospital care at Kings View Hospital and that is not at issue in this hearing.

The hearing filed of record has been reviewed along with the testimony at the hearing and the exhibits submitted subsequent to the hearing. It is the OCHAMPUS position that the formal review decision issued August 28, 1985, denying authorization for cost-sharing for care provided to this beneficiary be upheld on the basis the RTC level of care was not medically necessary nor the appropriate level of care and also the patient was not eligible for residential treatment center care within the meaning of the CHAMPUS Regulation.

The Hearing Officer, after due consideration of the appeal record, concurs in the recommendation of OCHAMPUS to deny CHAMPUS cost-sharing for the period in dispute. The Recommended Decision of the Hearing Officer is therefore to deny cost-sharing for the care provided to the beneficiary at Rio Vista Residential Treatment Center from January 18, 1985 through May 15, 1985.

FACTUAL BACKGROUND

This patient was twenty-two years old on October 15, 1984, when he was voluntarily admitted to the north ward of Kings View Hospital, an acute care psychiatric hospital. On January 18, 1985, he was discharged from the hospital and admitted to Rio Vista

Residential Treatment Center. The Rio Vista admission notes state that the young man was treated at Napa State Hospital from July 16, 1984 through mid-September, when he was transferred to St. Helena Hospital subsequent to difficulties that the parents perceived with the treatment staff at Napa State Hospital. The patient did well at St. Helena Hospital but his delusions persisted in regards to being shot and there continued to be the question of the patient's dangerousness in view of his obvious psychotic state. As a result, he was referred to Kings View Hospital for further evaluation and treatment. "The patient improved greatly at Kings View Hospital. We had him attending school, involved in the work preparation program and was able to go from being withdrawn and isolated to attending activities regularly, performing well, particularly in smaller groups. The patient continued to have problems in controlling his anger and tended to be impulsive and violent in reaction to minor frustrations" (Exhibit 3, page 3).

The diagnosis on the admission note was as follows: "Schizophrenia, paranoid type. The patient has experienced persecutory delusions in terms of people shooting at him. He describes, in detail, the people that are trying to get to him. He may have had auditory hallucinations although are not bothering him at the present time. His affect is flat. There seems to be evidence of either perseveration or echolalia when we are talking, and it is difficult for him to organize his thoughts to respond in a coherent fashion to questions and, as a result, there is extreme misinterpretation of what either myself or his parents are trying to say to him. There is increased social isolation and withdrawal" (Exhibit 3, page 4). A request for preauthorization was submitted by the provider (Exhibit 3, page 1). In this letter the treating physician states: "Although Mr. is improving slowly, these symptoms still persist and, in particular, his confusion renders him incompetent to handle his own affairs and as a result, he continues on conservatorship". The length of stay was estimated to be four to six months. The request for authorization of benefits was denied on the basis that because of the patient's age, chronic psychiatric history and psychiatric symptoms still persisting, residential treatment center care was not considered medically necessary nor the appropriate placement" (Exhibit 6). The provider appealed this denial and requested a formal review by letter dated June 21, 1985 (Exhibit 7). Additional information was requested by OCHAMPUS (Exhibit 9) which was provided before the formal review decision was made (Exhibit 10).

The Formal Review Decision was issued August 28, 1985 (Exhibit 12). This decision denied CHAMPUS cost-sharing for residential treatment center placement for the patient on the basis that such care was not medically necessary nor an appropriate level of care.

The provider requested a hearing and included additional medical documentation with this request (Exhibit 13). A hearing was held before the undersigned Hearing Officer on December 4, 1985, at 9:00 a.m. at the Federal Building, Fresno, California before this OCHAMPUS Hearing Officer, the provider, the beneficiary, the beneficiary's sponsor and father and also his mother. Mrs. Doris M. Berry represented OCHAMPUS at the hearing.

ISSUES AND FINDING OF FACTS

The general issue in this hearing is whether the care provided to the beneficiary at the Rio Vista Residential Treatment Center was medically necessary and provided at the appropriate level. As part of the general requirement for CHAMPUS coverage that treatment provided be medically necessary is the included issue of whether this beneficiary was eligible for residential treatment center care under the provisions of the CHAMPUS Regulation.

Chapter 55, Title X, United States Code, authorizes a health benefits program entitled Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The Department of Defense Appropriation Act of 1979, Public Law 95457, appropriated funds for CHAMPUS benefits and contains certain limitations which have appeared in each Department of Defense Appropriation Act since that time. One of the limitations is that CHAMPUS is prohibited from using appropriated funds for "...any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury or body malfunction as assessed or diagnosed by a physician, dentist, or clinical psychologist..."

Department of Defense Regulation DoD 6010.8-R was issued under the authority of statute to establish policy and procedures for the administration of CHAMPUS. The Regulation describes CHAMPUS benefits in Chapter IV, A.1 as follows:

> "Scope of Benefits - Subject to any and all applicable definitions, conditions, limitations and/or exclusions specified or enumerated in this Regulation, the CHAMPUS Basic Program will pay for medically necessary services and supplies required in the diagnosis and treatment of illness or injury, including maternity care. Benefits include specified medical services and supplies provided to eligible beneficiaries from authorized civilian sources such as hospitals, other authorized institutional providers, physicians and other authorized individual professional providers, as well as professional ambulance service, prescription drugs, authorized medical supplies and rental of durable equipment."

Chapter II of the Regulation, Subsection B, 104, defines medically necessary as "the level of services and supplies, (i.e., frequency, extent and kinds), adequate for the diagnosis and treatment of illness or injury. Medically necessary includes concept of appropriate medical care." Chapter II, B. 14, defines appropriate medical care in part as "That medical care where the medical services performed in the treatment of a disease or injury are in keeping with the generally acceptable norm for medical practice in the United States," where the provider is qualified and licensed and "the medical environment where the medical services are performed is at the level adequate to provide the required medical care." Chapter IV, paragraph G provides in pertinent part: "In addition to any definitions, requirements, conditions and/or limitations enumerated and described in other Chapters of this Regulation, the following are specifically excluded from the CHAMPUS Basic Program:

> 1. Not Medically Necessary. Services and supplies which are not medically necessary for the diagnosis and/or treatment of a covered illness or injury...
>
> 3. Institutional Level of Care. Services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care...
>
> NOTE: The fact that a physician may prescribe, order, recommend, or approve a service or supply does not, of itself, make it medically necessary or make the charge an allowable expense, even though it is not specifically listed as an exclusion."

Chapter IV, B, specifically covers institutional benefits and provides scope of coverage and exclusions. The requirement of care rendered at an appropriate level is repeated in paragraph (g): "Inpatient: Appropriate Level Required. For purposes of inpatient care, the level of institutional care for which Basic Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment..."

Chapter IV, A.10, provides "that the Director, OCHAMPUS (or a designee), is responsible for utilization review and quality assurance activities and shall issue such generally accepted standards, norms and criteria as are necessary to assure compliance. Such utilization review and quality assurance standards, norms and criteria shall include, but not be limited to, need for inpatient admission, length of inpatient stay, level of care, appropriateness of treatment, level of institutional care required, etc."

The Statement of OCHAMPUS Position (Exhibit 17) represents the position taken by OCHAMPUS at the hearing. It is that residential treatment center care provided this beneficiary was not medically necessary, nor provided at the appropriate level, because the RTC did not provide the type, level and frequency of services adequate to treat the patient's illness and because he was too ill to benefit from the services which were provided by the RTC. The second point made by Ms. Berry in the Statement of OCHAMPUS Position, and at the hearing, was that the beneficiary was not eligible for RTC care under the CHAMPUS basic program as an RTC is defined as a treatment program for children and adolescents, and the beneficiary was neither.

During the appeal of this case the medical records were sent to two different psychiatrists for peer review. The first was the OCHAMPUS medical director who is a board certified psychiatrist and also Chief, Office of Quality Assurance. The first review opinion is contained in Exhibit 5. The reviewer expressed concern regarding the lack of family involvement in the patient's care and stated: "given the patient's age and the generally younger population of an RTC, the RTC admission is inappropriate from a level of care standpoint...the patient needs to be in a chronic longterm psychiatric facility, with possible transition to a halfway house in six months if that is possible" (Exhibit 5). Additional medical records were sent by the provider and the case was again reviewed by the OCHAMPUS medical director (Exhibit 11). In his review the medical director again was of the opinion that the RTC was not the appropriate level of care and the patient could have benefitted from a longer stay in either a state or accute care hospital with subsequent discharge to a group home or halfway house. At the time of the review in August 1985, the medical director felt the patient needed a more confined atmosphere than an RTC was able to provide. He also expressed concern regarding the type of care the patient would receive in an RTC with a generally teenage and younger child community.

As I stated above, after the formal review decision was issued the provider sent additional medical documentation to OCHAMPUS and this was sent for peer review to the American Psychiatric Association Peer Review project. This peer review opinion is attached to the Statement of OCHAMPUS Position (Exhibit 17). The review was conducted by a board certified psychiatrist and, in response to the question of whether RTC level of care was appropriate, the reviewer answered as follows: "He is twenty-three years old and there is really no justification given for why an RTC was chosen for a young man of his age. Many of his behaviors are regressive and adolescent like and the RTC setting I believe just fosters this regressive behavior. He should be in a setting where more adult behavior is the norm. In addition, I believe that he is sicker than most people traditionally treated at an RTC in that he is chronically psychotic and has not been well controlled on anti-psychotic medication. Because of this a

long term inpatient facility is the appropriate level of care". The reviewer felt there were some parts of the treatment program which were appropriate (medication monitoring and vocational counseling) but some aspects which were inappropriate (such as treatment like an adolescent and lack of focus on emancipation from family). "In general, however, I don't think the milieu was the appropriate one for this young man in view of his age".

It is a clear requirement of the CHAMPUS Law and Regulation that the care provided to a CHAMPUS beneficiary must be medically necessary and, if institutional care, must be at the appropriate level required to render the medically necessary care. As pointed out in the Statement of OCHAMPUS Position, standards of medical necessity and appropriateness of medical care are referred to expert medical peer review for resolution, which has been approved in a prior final decision of the Assistant Secretary of Defense for Health Affairs: (OASD) HA-06-80. "The general medical community has endorsed peer review as the most adequate means of providing information and advice to third-party payors on medical matters which may be in question" (OASD-HA,6-80).

The provider's response to the medical reviewer's concern regarding the appropriateness of placement of this young man in a setting with children and adolescents was to point out in a letter dated October 4, 1985, that "although, in general, residential treatment is very beneficial for younger patients, young adults and older adults who have had difficulty functioning in less structured settings do better in a residential program where the hospital gains can be consolidated through coordination of rehabilitation services. Your own review, in fact, states that 'exceptions have been made'" (Exhibit 13, page 1). At the hearing the provider also pointed out that he did not agree with the argument that the beneficiary was not eligible because of age in that five people eighteen and over have been treated at Rio Vista Residential Treatment Center in 1985 and CHAMPUS has approved and paid for their care. He testified there were currently sixteen patients and only four of them were under eighteen. The primary people they treat are adolescents and young adults. The provider described the activities program at the RTC which included an activities program at the hospital, going to the provider's office at the hospital for psychotherapy, group programs, rehabilitation programs and work experience. He described the family therapy which had occurred in the hospital and the passes, both overnight and day passes, with his parents and brother and sister while in the RTC. The provider reported they found out some very important and appropriate information during this patient's stay in the residential treatment center. He was conscientious in his education program in preparing for the GED exam, but he took this exam twice during RTC placement and did not pass. It was important to find out this information so they could be realistic about his prognosis. The other important thing they found out was that the patient

needed the day program and was not able to work. He initially did well in the work experience program at the RTC but this gradually deteriorated and thus, they could realistically plan for what he might do after RTC discharge. The provider pointed out that Rio Vista was an approved RTC by CHAMPUS, had a provider number, and was opened in late 1978 with an onsite visit by OCHAMPUS in late 1979 or 1980. The average census is 15 or 16 which is down a little from the past and they always treat adolescents and young adults.

The two medical reviewers who reviewed this file felt that RTC care was not the appropriate level of care for this patient and thus not medically necessary within the CHAMPUS Law and Regulation, and as Hearing Officer I agree. I have examined the record which indicates the patient was very ill and the nursing notes, progress notes, case conference notes, etc. show this to be the case.

A lenthy discussion of this issue is not necessary for this hearing decision because it is my determination that, even if the care which was provided was appropriate, medically necessary care, this young man is not eligible for residential treatment center care because of his age. CHAMPUS is not an insurance program where the parties are free to contract for whatever care is provided, but is a benefits program which is specifically authorized by the CHAMPUS Legislation and the Regulation published thereunder. The Regulation provides benefits for care in an institution known as a residential treatment center and, prior to September 14, 1984, this was defined as a total therapeutically planned, group living and learning situation for round the clock, longterm psychiatric treatment of emotionally disturbed children. As of that date the definition was broadened to include not only children but adolescents. There is a great deal of material in the CHAMPUS Regulation pertaining to the requirements, guidelines, etc. for residential treatment centers and all of them refer to children. Chapter IV B.4(e) bears repeating where a residential treatment center is defined as "a facility, or a distinct part of a facility, that provides to children and adolescents a total twenty-four hour therapeutically planned group living and learning situation where distinct and individualized psychotherapeutic interventions can take place". This is why both peer reviewers felt that an RTC was not an appropriate placement for this young man, because in their experience and orientation a residential treatment center is for children and adolescents.

This patient was twenty-two years old when he was admitted to the RTC and turned twenty-three during the course of his treatment. Although the Regulation does not define adolescent, it is my opinion that all the accepted definitions of that term would exclude someone who is twenty-two/twenty-three years old. Children of CHAMPUS beneficiaries are denied coverage after twenty-one years of age unless they fall into one of two categories

(DoD Regulation 6010.8-R, Chapter III B.2.(3). I assume the beneficiary in this hearing is eligible for CHAMPUS coverage because of continuous mental incapacity prior to his twenty-first birthday and being dependent on his retired father for over 50% of his support. This regulatory provision indicates that by twenty-one he would be considered an adult which is a commonly accepted age, if not younger. Even though the patient is eligible for coverage because of an exception to the loss of eligibility at age twenty-one, he is still subject to the requirements and exclusions contained in the Regulation. The provider does not argue that this young man was an adolescent, but that this RTC treats young adults. I agree that young adult is the correct term to describe the patient. As Hearing Officer I have no authority to change the class of people eligible for RTC care in the CHAMPUS Regulation; they are children and adolescents, which this beneficiary is not. I am aware that the State of California has licensed this facility as a residential treatment center for people in an age group other than children and adolescents, but that cannot be the basis for my decision. I am bound by the language of the CHAMPUS Regulation and whatever the State of California chooses to do regarding licensing is not relevant to this decision.

At the hearing the provider pointed out that OCHAMPUS was paying for care for other CHAMPUS beneficiaries being treated at this RTC who were over eighteen years of age. This argument really has two parts. One is that, if payment is being made for other CHAMPUS beneficiaries, it should be made for the beneficiary in this hearing. No documentation regarding medical history, etc. was provided for these beneficiaries and, in any event, it would not have been relevant to this hearing. Even if payment is being made for care provided to patients who are no longer adolescents, but are young adults, it is my decision that it is being made in error because the language of the Regulation is clear. A mistake made by an agent of the government, such as the fiscal intermediary or OCHAMPUS, is not binding upon the federal government and cannot be used as the basis for my decision. To use an error as the basis for making further additional erroneous payments would result in perpetuating a mistake instead of correcting it. The standard for benefits under the CHAMPUS program is specific and benefits are subject to all limitations, exceptions, and exclusions as provided in the Regulation, one of which is that residential treatment center care is mental health care provided to children and adolescents in facilities with defined programs. The second part of the argument made by the provider is essentially an estoppel argument; that because benefits have been paid for other CHAMPUS beneficiaries under similar circumstances, benefits should be allowed for the beneficiary involved in this hearing. That argument is without merit as the government is not estopped to deny the erroneous acts of its agents, including fiscal intermediaries, in violation of CHAMPUS Law and Regulation.

The provider testified at the hearing that Rio Vista RTC was approved by OCHAMPUS and had a provider number. Even though that is true, it does not mean that CHAMPUS coverage will always be available for patients admitted to an approved RTC. All provisions, requirements and exclusions regarding coverage in the law and regulation must be met before cost-sharing can be approved, even in an approved institution. Chapter VI of the Regulation contains general policies and procedures for "Authorized Providers" and in paragraph A.1 provides as follows:

> "Listing of Provider Does Not Guarantee Payment of Benefits. The fact that a type of provider is listed in this CHAPTER VI is not to be construed to mean that CHAMPUS will automatically pay a claim for services or supplies provided by such a provider. CHAMPUS Contractors must also determine if the patient is an eligible beneficiary and whether the services or supplies billed are authorized and medically necessary, regardless of the standing of the provider to the provisions of this CHAPTER VI.

It is my decision that this patient is not an eligible beneficiary for RTC care.

At the hearing the sponsor discussed his son's hospitalization at Napa State Hospital and how unsatisfactory the care had been. He also testified that the beneficiary was presently living at home and attending a day program at Horizon House. This program was also described by the beneficiary at the hearing. It was clear from the parents' testimony that they were very pleased with the care and treatment their son had received both at Kings View Hospital and Rio Vista Residential Treatment Center. The beneficiary's mother and father both felt their son had made great strides during residential treatment center care. It is very satisfying to hear of the progress which has been made by the patient during this period of care but this cannot be the criteria I use to decide whether CHAMPUS should cost-share the care which was provided. I believe that upon reflection everyone would agree that whether the patient gets well or progresses during any period of medical treatment cannot be a valid basis for whether payment should be made by CHAMPUS for that care. The foundation of the CHAMPUS program is that all beneficiaries must be treated in a fair and equal manner and this would be extremely unfair and prejudicial to the patients who, for whatever reason, did not make a satisfactory response to treatment.

BURDEN OF EVIDENCE

A decision on a CHAMPUS claim on appeal must be based on the evidence in the hearing file of record under the CHAMPUS Regulation and the burden is on the appealing party to present what-

ever evidence he or she can to overcome this initial adverse decision, Chapter X.F.16(h)(i) DoD Regulation 6010.8-R. It is my decision that the provider has not met this burden regarding the medical necessity of the care for this patient at the RTC level and the beneficiary, as a young adult, is not eligible for RTC care under the CHAMPUS Law and Regulation.

SUMMARY

It is the recommended decision of the Hearing Officer that care provided to this beneficiary at Rio Vista Residential Treatment Center from January 18, 1985 through May 15, 1985 be denied CHAMPUS cost-sharing as the care was not medically necessary nor rendered at the appropriate level and, in addition, the beneficiary was not eligible for RTC care because of his age.

Dated this 16th day of January, 1986.

Hanna M. Warren

Hanna M. Warren,
Hearing Officer

HMW/sja