ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

FEB 26 1985

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) Case File 85-03
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 85-03 pursuant to 10 U.S.C. 1071-1092 and DoD 6010.8-R, chapter X. The beneficiary is the son of a retired member of the United States Air Force. The appealing party is the institutional provider, Grant Center Hospital, Miami, Florida. The appeal involves the denial of CHAMPUS cost-sharing of inpatient psychiatric care and related professional services provided at Grant Center Hospital from May 13, 1983, through March 23, 1984. The amount in dispute is approximately $91,500.00.

The hearing file of record, the Hearing Officer's Recommended Decision, and the Analysis and Recommendation of the Director, OCHAMPUS, have been reviewed. The Hearing Officer has recommended denial of CHAMPUS cost-sharing of the inpatient hospitalization from May 14, 1983, through March 23, 1984. The Hearing Officer found the care was provided above the appropriate level of care and did not meet the criteria for waiver of the statutory 60-day inpatient psychiatric care limitation.

The Director, OCHAMPUS, concurs with the Hearing Officer's Recommended Decision and recommends its adoption as the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs). The Director, OCHAMPUS, recommends the FINAL DECISION clarify the issues and periods in dispute, however, and reject the Hearing Officer's statement on the applicability of DoD 6010.8-R, chapter IV, B.1.g., to the statutory 60-day psychiatric care limitation.

The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, adopts the Recommended Decision and incorporates it by reference in the FINAL DECISION. The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to deny cost-sharing of the inpatient psychiatric care and professional services provided May 13, 1983, through March 23, 1984, as provided above the appropriate level of care and not qualifying for a waiver of the statutory 60-day inpatient psychiatric care limitation.

FACTUAL BACKGROUND

The beneficiary (date of birth: July 18, 1968) was admitted to Grant Center Hospital on March 14, 1983, with diagnoses of R/O Dysthymic Disorder and R/O Specific Developmental Disorder. Precipitating behavior included extensive use of marijuana, hitting and biting a teacher, and threatening his sister with a knife, and runaway episodes. He was previously hospitalized at Florida Medical Center in October 1982, but, following discharge, his functioning declined to the behavior leading to his rehospitalization. He also received outpatient psychotherapy prior to his admission to Grant Center Hospital. Inpatient treatment included individual psychotherapy three times per week, group therapy four times per week, family therapy twice per week, attendance in school 22 days a month, physical education, and various ancillary therapies including horticulture, music, dance, art, ceramics, and drama therapies. He had no medical complications during the hospitalization requiring inpatient care and received psychotropic medication PRN. Only three episodes of physical aggression occurred during the hospitalization. One incident involved throwing objects at a staff member and another consisted of a fight with another patient when the beneficiary was protecting a friend's property. The third incident occurred when the beneficiary became angry at his teacher and broke a pencil. The beneficiary was placed in the acute care unit on numerous occasions, but the behavior precipitating his sequesture was not listed in the record. The beneficiary apparently requested "time-outs" on several occasions. During the hospitalization, the beneficiary was never placed on suicide precautions and had numerous passes subsequent to June 1983.

The beneficiary was discharged to home on March 23, 1984, with diagnoses of Borderline Personality Disorder, R/O Paranoid Personality Disorder, and Specific Developmental Language Disorder.

The CHAMPUS fiscal intermediary cost-shared the first 61 days of inpatient care (March 14 through May 13, 1983). (The 61st day was erroneously cost-shared in absence of a waiver of the 60-day limitation.) A request for waiver of the statutory 60-day inpatient psychiatric care limitation was denied by OCHAMPUS. OCHAMPUS found the beneficiary was not a significant danger to himself or others after 60 days of inpatient care and did not require the inpatient hospital setting. Claims for hospitalization subsequent to May 12, 1983 (the 60th inpatient day), total approximately $90,000.00. The fiscal intermediary erroneously paid approximately $3,500.00 for care provided in June 1983. Additionally, CHAMPUS claims for inpatient psychotherapy provided by the attending physician and a clinical psychologist were submitted totalling approximately $18,000.00. The fiscal intermediary erroneously paid approximately $4,300.00 for care subsequent to May 12, 1983.

The institutional provider, Grant Center Hospital, appealed the OCHAMPUS denial of a waiver of the 60-day inpatient limit and

requested a hearing. The hearing was held on November 8, 1984, in Miami, Florida, before Valentino D. Lombardi, CHAMPUS Hearing Officer. The Hearing Officer has issued his Recommended Decision, and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The Hearing Officer correctly cited the statutory, regulatory, and policy guidelines applicable to this appeal. The statement of issues is, however, inexact. The primary issues in this appeal are, (1) whether, during the inpatient psychiatric care provided May 13 through December 31, 1983, and March 1 through March 24, 1984, the beneficiary's physical or mental condition met the requirements for waiver of the statutory 60-day calendar year inpatient psychiatric care limitation and (2) whether the inpatient psychiatric care from May 13, 1983, through March 23, 1984, was above the appropriate level of care.

Sixty Day Inpatient Mental Health Service Limitation.

The Hearing Officer correctly found that CHAMPUS coverage of inpatient mental health services is limited to 60 days per calendar year in the absence of a waiver for extraordinary medical or psychological circumstances. (See Public Law 97-377, Section 785; 10 U.S.C. 1079 (a)(6)(i).) The guidelines for waiver, established by the Director, OCHAMPUS, as required by the statute, provide that the patient must suffer from an acute mental disorder or an 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 require a type, level, and intensity of service that can only be provided in an inpatient setting. (See CHAMPUS Policy Manual, Vol. I, chapter I, section 11, page 11.1.1.) An alternative criteria allows a waiver if the patient has medical complications and requires an inpatient setting. The Hearing Officer found the beneficiary in this appeal had no medical complications requiring inpatient care and I agree. The second criteria is not applicable to the facts in this appeal.

The Hearing Officer adequately discusses the cogent evidence pertaining to this issue but makes no clear finding. The Hearing Officer did recommend upholding of the OCHAMPUS Formal Review Decision which found that the beneficiary did not meet the criteria for inpatient care beyond 60 days. I concur in the Hearing Officer's recommendation and adopt his discussion and analysis in this FINAL DECISION. The Hearing Officer correctly noted that the hospital record required careful scrutiny to determine the beneficiary's condition. The records reflect only two described incidents of physical aggression during the hospital stay in issue. One involved a fight with another patient (July 1983) and the other occurred when the beneficiary became angry at a teacher and broke a pencil (February 1984). (The latter incident can be characterized as aggression only in the broadest sense.) The Hearing Officer was not impressed by the severity of these incidents. He found the record was devoid

of any other incidents of potential physical aggressiveness. I agree. To justify a waiver based on danger to others, a seven and a half month hospitalization from May through December 1983 requires more objective documentation than is present in this record. Testimony by the attending physician and clinical psychologist did not reveal any other incidents of danger to others. As noted by the Hearing Officer, the medical records indicate numerous "time-outs" and placement of the beneficiary in the acute care unit. However, the precipitating behavior is not given in the record, and it appears the beneficiary requested sequestration on many occasions. The record indicates the beneficiary initially lacked self-control and was disruptive; however, beginning in June 1983, he was granted numerous passes both on and off grounds and moved up to a higher privilege level during his hospital stay. Progress reports indicate the beneficiary was trying very hard to control his temper.

As to significant risk to himself, the record again reveals no notable instances. There was a remark by the beneficiary in July 1983 that he no longer wished to live. However, the beneficiary was not placed on suicide precautions and made no gestures nor additional remarks of this nature.

Both the hospital and OCHAMPUS submitted medical reviews for the record. The Hearing Officer did not discuss these reviews in detail but relied primarily on the objective evidence of the medical records. As the medical records reveal little to support compliance with the waiver criteria, the opinions of the hospital's medical reviewers have little weight. These reviews base their conclusions on numerous placements in the acute care unit and episodes of physical aggressiveness, but, as noted above, the reasons for placement in the acute care unit or the type and severity of aggressiveness are not described in the record or in the testimony of the attending physician or clinical psychologist. Without descriptions of the conduct of the beneficiary, I cannot evaluate these instances, and the opinions of the hospital's reviewing physicians cannot be determinative of this issue.

The second part of the waiver criteria in issue is that the beneficiary requires a type, level, and intensity of service that can only be provided in an inpatient setting. This requirement was discussed by the Hearing Officer in connection with the regulation requirement of appropriate level of care. The two concepts are similar and require the same type of inquiry. The Hearing Officer found a residential treatment center could have provided adequate treatment for the beneficiary. The beneficiary, therefore, did not require the type level, and intensity of an inpatient setting. As discussed in more detail in the following section, there is insufficient evidence of record to conclude the beneficiary required treatment solely in an acute inpatient setting.

The Hearing Officer found the appealing party failed to meet the burden of proof that the beneficiary met the criteria for

CHAMPUS coverage of inpatient care in excess of 60 days. I adopt this finding. No extraordinary psychological circumstances as defined in the OCHAMPUS criteria are documented in this appeal.

In clarification of the Hearing Officer's findings, the 60-day limitation on coverage of inpatient mental health services is a calendar year limitation, and, therefore, during January 1 through February 29, 1984, the waiver criteria are inapplicable. I find the inpatient care and professional services provided May 13 through December 31, 1983, and March 1 through March 23, 1984, do not meet the criteria for waiver of the 60-day inpatient mental health service limitation and are excluded from CHAMPUS cost-sharing.

Appropriate Level of Care

Following my review of the record, I agree with the Hearing Officer's finding that the hospitalization of the beneficiary was above the appropriate level of care. However, the Hearing Officer apparently intended to find hospitalization after 60 days was above the appropriate level but inadvertently referenced the date of May 13, 1983. This reference is corrected to reflect care subsequent to May 12, 1983, the 60th day of inpatient care, was above the appropriate level. The Hearing Officer cited and quoted the applicable regulation provisions excluding inpatient care above the appropriate level from CHAMPUS coverage. As noted above, the waiver criteria are not applicable to the first 60 days of inpatient care in a calendar year. Therefore, the issue of appropriate level of care is particularly applicable to the period of care of January 1 through February 29, 1984.

The Hearing Officer found the hospital records indicated the treatment plan for the beneficiary called for a one-year hospitalization with discharge to home with no contemplation of any other placement. Testimony from the attending physician confirms placement in a residential treatment center (RTC), a lower level of care, was not considered. The attending physician testified she was not familiar with RTCs. Witnesses for the appealing provider distinguished RTCs from acute hospitalization in intensity of service and quality of personnel. That, however, is not at issue. The issue is whether the beneficiary would have been adequately treated in an RTC. The Hearing Officer found an RTC could have provided adequate treatment, relying, in part, on American Psychiatric Association medical reviews. I agree the appealing party has not shown an RTC would have been inadequate for the diagnoses and documented behavior of this beneficiary.

Testimony of the Medical Director of the hospital gave favorable reviews to several RTCs, although none were in the immediate area. Other testimony was directed at the inconvenience or potential lack of family involvement if the beneficiary were placed in an RTC in a distant location. However, many CHAMPUS beneficiaries are routinely placed in RTCs not within easy commuting distance of their parents. While family involvement is a primary consideration for many disturbed

adolescents, acute inpatient care cannot be justified on the basis that family involvement would be difficult or expensive for an RTC more than a reasonable commuting distance.

Based on the evidence of record, I concur in and adopt the Hearing Officer's finding and recommendation to deny cost-sharing of the inpatient hospitalization from May 13, 1983 (corrected date), to March 23, 1984, as above the appropriate level of care. While I concur in that recommendation, I must reject the Hearing Officer's discussion and finding that DoD 6010.8-R, chapter IV, B.1.g., is applicable to the statutory 60-day inpatient mental health limitation. The Hearing Officer noted that the above cited regulation provision allows cost-sharing of inpatient care above the appropriate level if a lower level of care facility is not available in the general locality. Cost-sharing of such care is at the rate of a lower level of care facility. The Hearing Officer found the exception inapplicable as there was no evidence indicating the unavailability of a lower level care facility. This discussion is erroneous. I have rejected this interpretation of 10 U.S.C. 1079(a)(6) and DoD 6010.8-R, chapter IV, B.1.g., in OASD(HA) 85-01. The statutory 60-day inpatient mental health care limit is specific in its language that service, ". . . may not be provided . . . in excess of sixty days in any year. . . " unless one of four enumerated exceptions is met. Care in a lower level of care facility is not one of the listed exceptions. A listed exception is care, ". . . provided as residential treatment." The care at issue in this appeal does not qualify under this exception as the care was provided as acute inpatient care, not residential treatment. Cost-sharing of inpatient care at the rate of a lower level of care is not within the exception and is not in accordance with the statutory intent. I find regulation provision authorizing cost-sharing of inpatient care at the rate of a lower level care facility is not applicable and superceded by the statutory provision for inpatient mental health services.

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to deny CHAMPUS cost-sharing of the inpatient care provided the beneficiary at Grant Center Hospital, including professional charges for inpatient psychotherapy from May 13, 1983, through March 23, 1984. The decision is based on findings that, (1) The beneficiary was not a significant risk to self and a danger to others and did not require the type, level, and intensity of an acute inpatient setting from May 13 through December 31, 1983, and from March 1 through March 23, 1984; and (2) the inpatient hospitalization was above the appropriate level of care during May 13, 1983, through March 23, 1984, and, therefore, excluded from CHAMPUS coverage. The appeal of the appealing provider, Grant Center Hospital, is, therefore, denied. As the record indicates the fiscal intermediary erroneously cost-shared hospital services/supplies and psychotherapy by the attending physician and clinical psychologist provided subsequent to May 12, 1983, the matter of potential recoupment of these

funds under the Federal Claims Collection Act is referred to the Director, OCHAMPUS, for consideration.

William Mayer, M.D.

William Mayer, M.D.

RECOMMENDED DECISION

CIVILIAN HEALTH AND MEDICAL PROGRAM FOR UNIFORMED SERVICES

(CHAMPUS)

IN THE APPEAL OF BENEFICIARY:

SPONSOR :

SPONSOR'S SOCIAL SECURITY NO:

PROVIDER/CLAIMANT : GRANT CENTER HOSPITAL

This case is before the undersigned Hearing Officer pursuant to a request for a hearing by the above-named provider/claimant dated July 23, 1984. The Office of Civilian Health and Medical Program for the Uniformed Services has granted this request for hearing. This hearing was conducted pursuant to Regulation DOD 6010.8-R Civilian Health and Medical Programs for the Uniformed Services (CHAMPUS), Chapter X, Section F, Paragraph 4 and Section H, Paragraph 2B.

A hearing was conducted by the undersigned on November 8, 1984, in the conference room at the Grant Center Hospital Complex, 10601 SW 157th Avenue, Miami, Florida, pursuant to notices sent by the undersigned on October 15 and 23, 1984. Members of the Administrative Staff and Medical Personnel of the Grant Center Hospital were present at the hearing, and the hospital was represented by Marvin W. Lewis, Esquire of Shorenstein & Lewis, Suite 702, Brickell Center, 799 Brickell Plaza, Miami, Florida. OCHAMPUS was represented by Gary Fahlstedt, Esquire, of the Office of Hearings and Appeals. All the evidence had been submitted at the time of the hearing in the form of exhibits and testimonial evidence presented on behalf of the parties; the matter is now ready for a Recommended Decision.

OVERVIEW

The record indicates that , the son of a retired member of the United States Air Force, , was referred to the Grant Center Hospital by his outpatient Psychologist, Dr. Zaccheo, and was admitted on March 14, 1983 with diagnoses R/O dysthymic disorder and R/O specific developmental language disorder. He was fourteen years old at the time of his admission, and during the prior seven years suffered from learning disability and had a family history of alcoholism, depression and antisocial behavior. was an inpatient at the hospital from said admission date until discharged on March 23, 1984. The psychiatric treatment and services received at the hospital during this time period consisted of full inpat-

ient hospitalization including psychologial testing, psychoeducational testing, individual psychotherapy, group therapy, family therapy and other clinical and educational treatment. At his discharge, the beneficiary was released to his home but was to continue as an outpatient with Dr. Zaccheo with recommendations that the family continue in therapy also.

The claimant had filed claims for CHAMPUS benefits for the various medical services rendered during the beneficiary's inpatient hospital stay; during the course of this hospitalization, requests were also made to CHAMPUS for an extension of benefits for inpatient mental health care beyond the usual statutory limit of sixty days per calendar year. The claimant also provided CHAMPUS with certain pertinent medical records along with these requests.

In May, 1983, the claimant was informed by telephone from OCHAMPUS of the denial of this claim for an extension of benefits. Formal notification followed by letter dated June 7, 1983, to the sponsor, the hospital and the treating physician, Jane Mertens, M.D. This denial indicated that it was based upon the results of a professional Psychiatric Peer Review performed at the request of CHAMPUS. While awaiting the formal notification, the claimant requested an appeal to the CHAMPUS denial for an extension of benefits by letter dated May 31, 1983, and acknowledged by CHAMPUS on June 13, 1983.

At the request of OCHAMPUS, the claimant forwarded additional pertinent medical information from the patient's hospital records in support of its appeal of the denial of the request for a waiver of the sixty day limitation. On June 26, 1983, OCHAMPUS forwarded to Grant Center Hospital a Formal Review Decision, which indicated that the claim would remain denied since certain program requirements for CHAMPUS coverage had not been met. CHAMPUS also contacted the local CHAMPUS/CHAMPVA intermediary, Blue Shield of California, to inform them of the appeal decision and request that any claims that were paid for services rendered by both the hospital and the individual providers between May 13, 1983, and March 23, 1984, be recouped.

On July 23, 1984, the claimant requested a Fair Hearing in accordance with CHAMPUS guidelines. The claimant also provided OCHAMPUS with additional information involving the names of the witnesses who would be appearing and testifying at the hearing and provided additional medical information pertaining to ; inpatient hospital stay; all of which were made exhibits in the CHAMPUS Hearing File.

After correspondence and telephone communications between the parties and the Hearing Officer, arrangements were made to schedule a hearing at a time convenient to all parties. Final arrangements were made to schedule the hearing at the Grant Center Hospital for the convenience of the claimant and its witnesses.

FACTUAL BACKGROUND

Certain exhibits contained in the CHAMPUS hearing file factually set forth the background regarding long history of emotional and behavioral problems. The records from the Grant Center Hospital cover the period from March 14, 1983 to March 23, 1984. These records include the Admission Note, the Physical Examination and the Psychological Evaluation Reports, the Individual Treatment Plan, the Individualized Treatment Plan Progress Records, the Individual Psychotherapy Treatment Summaries and Progress Reports, the Discharge Summary of Family Treatment, the Discharge Summary and other documentation including letters from the treating physician, Jane Mertens, M.D. (Exhibits 4, 11 and 18) Briefly this documentary evidence, which was supplemented by testimony from Dr. Mertens and David M. Feazell, Ph.D., Clinical Psychologist, indicate that at the time of his admission the beneficiary was a fourteen year old juvenile who was referred for treatment to the Grant Center Hospital. His parents were concerned about his alleged marijuana abuse, his school suspension, his aggressiveness and his runaway episodes. It was also indicated that he had a previous hospital admission at the Florida Medical Center in October, 1982, but two months after his discharge in December, 1982, he had gradually deteriorated in his functioning and resumed his marijuana abuse, depression and violence. This latter problem resulted in a suspension from school for punching and biting a teacher, punching a hole in the wall at home and threatening his sister with a knife. The hospital saw as having a biological predisposition to psychiatric problems from a family history of depression, alcoholism and antisocial behavior; further, it felt that the beneficiary himself had a learning disability, was very ill, had little stability in his family world and acted out his sexual and aggressive impulses. This led to an initial diagnosis of R/O dysthymic disorder to address the level of depression observed and R/O specific development language disorder, i.e., the learning disability. (Exhibit 18, pages 6 & 7)

The hospital began a long and involved treatment program which included full inpatient hospitalization, psychological testing, psychoeducational testing, individual psychotherapy, group therapy, family therapy and other clinical and educational treatments and therapies. On April 22, 1983, his diagnosis was revised, at the time of staffing, to borderline personality disorder, R/O paranoid personality disorder and specific developmental language disorder. (Exhibit 18, page 16) Treatment continued for at the hospital until his discharge, but it is evident that even from as early as April 22, 1983, the hospital believed that he would continue to require hospitalization for twelve months of intensive inpatient treatment because of his potential for aggressive acting out toward others, previously demonstrated by assaultive and threatening behavior, as well as his aggressive behavior within the therapeutic hospital setting, which has required confinement in the Acute

Care Unit (ACU) to control the patient. (Exhibit 4, page 6)

At the hearing, OCHAMPUS presented its position indicating that CHAMPUS was not disputing the beneficiary's first sixty days of hospitalization, nor was it disputing the type or quality of care received at the hospital, the appropriateness of the diagnosis or the motive and credentials of the hospital staff. The denial for the extension of benefits does not mean that the care was not medically necessary but whether or not it was provided higher than the appropriate level. It was further indicated that there is a statutory limitation on the providing of care in a mental health facility for longer than sixty days per calendar year without the necessary waiver; and further, there are regulatory exclusions which deny inpatient hospital care at a higher level than necessary.

OCHAMPUS stated that its position was that after the initial sixty days of inpatient hospitalization, the needs of the beneficiary could have been provided for at a Residential Treatment Center (RTC); this was indicated based on Peer Reviews conducted in 1983 by physicians from the American Psychiatric Society (Exhibit 5) and by its Medical Director, Alex R. Rodrigues, M.D. (Exhibit 9) and in 1984 again by memebers of the American Psychiatric Association. All of these Peer Reviewers concluded, based on the records which they had reviewed, that the beneficiary after the initial sixty days at the hospital should have been transferred to an RTC which would have adequately and more appropriately provided the level of care which he needed. OCHAMPUS believed that the claimant never considered the use of a RTC but only indicated in its Progress Notes that it would not be suitable to discharge to his home, OCHAMPUS agreed with this position but believed that a RTC would have been the suitable type facility to treat .

OCHAMPUS concluded that the record was devoid of any medical conditions which would warrant hospitalization after the initial sixty days, and also of any mental conditions which would indicate that the beneficiary was a danger to himself or others. It stated that his usual confinements to the ACU were caused by verbal aggression, there was only one fighting incident between peers and it involved no weapons, and received numerous passes which would not indicate that he was a danger to himself or others during this time.

The hospital takes the position that it is entitled to a waiver of the sixty day per year limit since the beneficiary met the waiver criteria. The hospital believes that the CHAMPUS Peer Review doctors misunderstood the hospital record and that there were many incidents of violent behavior subsequent to the initial sixty days. The hospital further criticizes the Peer Review findings of one of the doctors who stated that the beneficiary could have been put back and forth into the hospital setting as the need arose. (Exhibit 19, page 2) The hospital further indicated that the beneficiary's treatment objectives could not have been reached in a RTC since said facility is

not equivalent to a hospital setting; in that, he would not have been able to receive family therapy which he needed as an important part of his overall treatment.

The hospital also presented its own Peer Reviews which were conducted by psychiatrists in the Miami area at the request of the hospital. The reviewing physicians, who had examined all of the beneficiary's records from the hospital, concluded that presented a dangerous situation to himself and members of his family; therefore, his need for this level of hospitalization, that is, inpatient treatment was necessary. (Exhibits 23, 24 & 25) The hospital believed that its Peer Reviewers spent more time reviewing the file thereby understanding it better and reaching the proper conclusion.

Dr. Mertens and Dr. Feazell testified at the hearing concerning their involvement with . They both testified of their involvement with the beneficiary from his initial admission until his time for discharge. Dr. Mertens stated that she believed that met the CHAMPUS guidelines for the entire period of time in which he was hospitalized. She stated that he required twenty-four hour inpatient hospital care and could probably groom himself and little else. She stated that he had difficulty following instructions and was a danger to himself and/or others; this being the reason why he was not discharged sooner.

She stated that she believed that during the third month of his hospitalization he just began to trust his therapist and was able for the first time to put into words his feelings involving his behavioral problems and his prior family troubles.

She also stated that not until September or October of 1983 was he able to inform his therapist of previous sexual abuses which led him to believe he was homosexual; she stated that he was unable to tell his parents, for he felt they would not support him, and had been carrying this problem around with him for over a year. She stated that near the end of October and the beginning of November 1983 that he began to become nonviolent and discharge planning was initiated which seemed to perk him up. She also believed, however, that the family was pushing for discharge and the hospital was still not truly convinced that he could function as an outpatient when he was finally discharged in March, 1984.

She stated that during his hospital stay after the initial sixty days, he still had many "time outs" for violent and aggressive behavior towards staff memebers including incidents on July 3, 1983, when he was involved in a fight with a fellow patient, and on February 9, 1984, when he showed his anger toward a substitute teacher by breaking his pencil in the classroom. She also indicated that although these two incidents were specifically mentioned in the record, there may have been other problems which may have been recorded in the ACU record but not in the chart. She assumed that the incidents mentioned in the record were more serious, but 's violent behavior usually occurred

on a weekly basis.

She testified that she was not very familiar with an RTC, but based upon her beliefs, there exist more freedom at such a facility and this would cause to regress to his prior behavior. She stated that the only time had unaccompanied passes were on home visits. She also stated that 's level at the hospital never reached full priviledge because of his behavioral problems and his inability to be motivated. She also testified that never attempted to injure himself and only threatened self-injury once and further that no mechanical restraints were used at the hospital but only physical (staff) restraints and ocassional medication.

Dr. Feazell, who was 's clinial psychologist, also indicated that he was not able, at any time subsequent to the sixty days after his admission, to be discharged to a RTC. He stated that he was familiar with RTC's and stated that the beneficiary would not have received the increased intensity of psychotherapy that he received in the hospital; this being based on the better ratio of staff to patient. He also indicated that the treatment plans are better coordinated at the hosptial and that supervision is instantly available in a hospital setting. He believed that a RTC would have lacked the family therapy treatment which received at the hospital and would have increased his risk of regression. In reference to a local RTC, namely, Montinari Center, he stated that he did not believe that that facility would have been suitable in that most of the patients there go to regular school, there is no confined supervision, would have been just stored there and he does not believe that they have an adequate family therapy.

With regard to his privilege level at the hospital, Dr. Feazell stated that did not reach the Building Privilege Level until September 1983 and did not begin to go on home passes until the ninetieth day of hospitalization. He believed that the fight incident of July, 1983 and the confrontation with the teacher in February, 1984 were both equally serious incidents, and the reason that there was a lack of further physical violence was due to the therapy which the beneficiary was receiving at the hospital and due to the intensity of the staff at the hospital. He observed that at an RTC, the staff would be less qualified, less experienced and lesser in number.

He believed that needed a great deal of psychotherapy just to uncover some of his inner problems involving sexual abuse, and further, that his discharge at an earlier date would be dangerous because it would place him in a situation which he could not handle, he would keep problems to himself and he would resume his former drug abuse after becoming distressed due to these problems. When questioned by the CHAMPUS attorney concerning the therapies not available in a RTC, he indicated that he did not believe that family therapy or individual therapy sessions at the doctor level were available, but he was unaware of the CHAMPUS requirements necessitating

these type of therapies at a RTC.

Anthony Nowels, M.D., the Medical Director of the claimant hospital, is also a psychiatrist and an ocassional CHAMPUS Peer Reviewer. He was requested to testify by the claimant concerning his knowledge about RTC's. He stated that as a general rule a hospital staff has more skilled persons than a RTC; although a RTC may have a director who is just as skilled as a hospital director, and further that the hospital treatment program is more intensified and indivdualized than at a RTC. He indicated that at an RTC the patient is made to fit the program rather than the other way around, and that their only common factor would be that they both provide room and board. He also indicated that a RTC is suitable when hospitalization is no longer necessary and that at a RTC a physician may not feel comfortable giving certain medications because of the lack of proper backup. He indicated that he was familiar with the Montinari Center where he believed that the students have a great deal of freedom both on the grounds and in the community surrounding the facility, but he was not familiar with the RTC that is located in Tampa, Florida, although he concluded that family therapy would not have been feasible at the latter facility due to the distance that the family would have to travel, and also stressed the importance of such family therapy. He also concluded that the presence of key staff on hospital grounds was important and that the psychiatrist at a RTC would be only on call.

In commenting on the Peer Review conducted at the request of CHAMPUS, he questioned whether the reviewers really specialized in child psychology and specifically questioned the Peer Reviewer who indicated that the beneficiary could be placed in a RTC setting with ocassional tranfers to a hospital if necessary; he indicated to set up a treatment plan of this nature would be totally disorganizing. He also conclued that a sixty day hospital stay is unusual but it could be possible dependent upon the child.

It was originally planned to have Neil Hamel, a Team Leader for the Grant Center Hospital, testify regarding his involvement with the beneficiary. He was unable to appear, but the hospital attorney indicated that his testimony would be cumulative in nature regarding the necessity for treatment for . The Curriculum Vitae of each doctor who testified and who also conducted the various Peer Reviews, is made part of the exhibit file. The Curriculum Vitae of each doctor who conducted the Peer Review is included in the exhibit file with each review document. All of these documents exhibit a well established background in his or her respective field. (Exhibits 26, 27, 28, 29 & 31)

ISSUES AND FINDINGS OF FACT

Primary Issue

"Whether the mental health care provided the beneficiary,

at the Grant Center Hospital, Miami, Florida, from May 13, 1983 through March 23, 1984, were covered benefits under the CHAMPUS Basic Program?"

Seondary Issues

"Whether the Grant Center Hospital's request for a waiver of the sixty day per calendar year statutory limit of benefits for inpatient mental health care for the year 1983 was properly denied by OCHAMPUS?"

"Whether the beneficiary's first sixty days of mental health care at the Grant Center Hospital for the year 1984 be cost shared under the CHAMPUS Basic Program?"

"Whether the Grant Center Hospital's request for a waiver of the sixty day per calendar year statutory limit of benefits for inpatient mental health care for the year 1984 was properly denied by OCHAMPUS?"

"Whether the mental health care provided the beneficiary, at the Grant Center Hospital from May 13, 1983 through March 23, 1984, could have properly been provided in a CHAMPUS authorized and accredited Residential Treatment Center?"

Department of Defense Regulaton 6010.8-R

Chapter II, B, a--Appropriate Medical Care
Chapter II, B, 104--Medically Necessary
Chapter II, B, 155--Residential Treatment Centers (RTCs)
Chapter IV, A, 1--Scope of Benefits
Chapter IV, B, 1g--Inpatient: Appripriate Level Required
Chapter IV, G, 1--Exclusions and Limitations; Not Medically Necessary
Chapter IV, G, 3--Exclusions and Limitations; Institutional Level of Care
Appendix A--CHAPMUS Standard for RTCs
10. USC 1079, Subsections (A) (6) (I)
Defense Appropriation Act 1983 (Public Law 97-337, 96 STAT. 1830) Section 785
CHAMPUS Policy Manual, Vol. I, Chapter I, Section II, pg. II.I.I.

The CHAMPUS Basic Program provides benefits for any and all medically necessary services and supplies required in the diagnosis and treatment of an illness or injury. This payment doctrine, however, as set forth in Chapter IV, Section A 1 of the Regulation, does indicate that said payment is:

"Subject to any and all applicable definitions, conditions, limitation, and/or exclusions specified or enumerated in this regulation..."

In Chapter II, Section B 104, medically necessary is defined as that level of services and supplies, (that is, frequency, extent & kinds),

adequate for the diagnosis and treatment of illness or injury, and further that medically necessary includes the concept of appropriate medical care. Appropriate medical care is definded in Chapter II, Section B 14. That portion of the definition which is applicable to the within hearing is found in subsection C and reads as follows:

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

Certain medical services may ordinarily be determined to be medically necessary; however, the two-fold requirement that it meets the definition of "appropriate medical care" requires that each claim for medical services should be scrutinized to determine that the services are rendered at the level adequate to provide the required medical care. If the service is not within the proper level of care, it is determined to be not medically necessary. Section B 1 g of Chapter IV states that for purposes of inpatient care, the level of institutional care for which basic program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment. If, however, the institutional level of care, including services and supplies related to the inpatient hospital stay in a hospital or other authorized institution, are determined to be above the appropriate level required to provide the necessary medical care, said benefits are specifically excluded from the CHAMPUS Basic Program as provided in Chapter IV G 3. Further, since care above the appropriate level is determined to be not "appropriate medical care" then another exclusion, namely Section G 1 of Chapter IV, would be applicable. Said section indicates that services and supplies which are not medically necessary for the diagnosis and/or treatment of a covered illness or injury are specifically excluded from the CHAMPUS Basic Program.

CHAMPUS regulations further state in Chapter IV A 10 that prior to the extension of any CHAMPUS benefits under the basic program, claims submitted for medical services and supplies rendered CHAMPUS beneficiaries are subject to review for the quality of care and appropriate utilization. The Director of OCHAMPUS is ultimately responsible for setting forth the standard norms and criteria as necessary to assure compliance with this review. Said section specifically states:

> "Utilization review and quality assurance standard, 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., implementing instructions, procedures and guidelines may provide for retrospective, concurrent, and prospective review, requiring both inhouse and external review capabilities on the part of both CHAMPUS contractors and OCHAMPUS."

This rule clearly establishes a policy whereby OCHAMPUS can determine the need for medical services as requested under its basic program. The normal method by which this is accomplished

by OCHAMPUS is through the use of Peer Reviews. In a prior Final Decision issued by the Assistant Secretary Defense for Health Affairs, it was established that the general medical community has endorsed Peer Review as the most adequate means of providing information and advice to third-party payors concerning medical matters which may be inquestion. (Final Decision in case No. OSD-06-80, October 28, 1981)

Both CHAMPUS and the claimant took advantage of the use of Peer Reviews in presenting their evidence in this case. Although all of the Peer Review physicians are Board-Certified Psychiatrists, the opinions of the APA Reviewers who performed this task on behalf of OCHAMPUS differed from that of the reviewers who performed their review on behalf of the claimant hospital regarding the inpatient hospitalization of the beneficiary subsequent to the initial sixty day period.

With regard to the inpatient hospitalization for mental health services during any calendar year, CHAMPUS coverage is limited to a sixty day period as imposed by Section 785 of the 1983 Department of Defense Appropriations Act. This limitation is now set forth in permanent legislation at 10 USC 1079. Subsection (A) (6) (i) indicates that inpatient mental health services may not be provided to a patient in excess of sixty days in any year unless one of the following conditions are applicable:

1. Provided under the program for the handicapped.
2. Provided as residential treatment care.
3. Provided as partial hospital care.
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 nonfederal health professional pursuant to regulations published by the Secretary of Defense.

OCHAMPUS published certain criteria under which waivers may be granted pursuant to 10 USC 1079 (A) (i) (4). The CHAMPUS Policy Manual Volume I, Chapter I, Section 11, page 11.1.1 states as follows:

> "1. The patient is suffering from an acute mental disorder or an 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."

In reviewing the medical record from the hospital and the testimony presented at the hearing, it is apparent that criteria

two would not be applicable to the present case. did not have any medical complications which would require the type level and intensity of service that could only be provided in an inpatient hospital setting. The record does indicate some minor medical problems which were resolved at the hospital such as dental work, an underweight problem, bursitis, a skin rash, and sinusitis. No medical condition existed which could not be controlled as an outpatient or in another type facility rather than a hospital.

The issue revolves around 's mental condition subsequent to the sixtieth day after admission. OCHAMPUS has allowed for benefits under its basic program for the time period from the date of admission until sixty days thereafter but has denied such benefits subsequent to that date as being above the appropriate level of care. OCHAMPUS has also denied the requested waiver pursuant to the criteria set forth in the CHAMPUS Policy Manual. "Was the beneficiary at a significant risk to himself or becoming a danger to others after the initial sixty days of hospitalization and still required the type level and intensity of service that can only be provided in an inpatient setting?" was the question posed to the reviewing physicians.

The differences of opinion among said reviewers, who are experts in their field, relating to the beneficiary's level of care, appears to be sharply divided; however, all the experts believe that the beneficiary's condition was long-term. The CHAMPUS reviewers determined that should have been placed in a Residential Treatment Center as defined by Section B 155 of Chaper II. Such a facility specifically provides for round the clock, long-term psychiatric treatment of emotionally disturbed children who have sufficent intellect potential for responding to active psychiatric treatment, for whom outpatient treatment is not appropriate, and for whom inpatient treatment is determined to be the treatment of choice. The claimant's reviewers concluded that inpatient hospitalization was appropriate for the beneficiary during his entire hospital stay.

In assessing and evaluating the opinions of the various experts, the hospital record must be carefully scrutinized to determine the beneficiary's condition during his hospital stay. Following the initial sixty days of hospitalization, the hospital record only reflects two incidents of actual physical aggression. The incident involving a fist fight with a fellow patient in the dormitory (Exhibit 4, page 5, Exhibit 11, page 13 and Exhibit 18, pages 41, 63 and 66) and the other involving the incident with the substitute teacher whereby became so angry during class that he broke his pencil (Exhibit 18, pages 56 and 92). The former incident occurred in July, 1983 and the latter in February, 1984. The record was devoid of any other type incidents which would indicate 's alleged physical aggression towards fellow patients or staff. There are indications in the various progress reports that had numerous "time outs" during each reporting period. It should be noted, however, that the reasons for these "time outs" was not fully explained and many

of them were at the beneficiary's own request which would indicate that he was attempting to exert self-control. At the hearing, neither Dr. Mertens nor Dr. Feazell could specifically enumerate any other instances of violent behavior which would indicate that was at a significant risk to himself or others. The incidents inquestion do not appear to be beyond the capacity of a residential treatment center as defined in the prior-mentioned CHAMPUS guidelines.

In Appendix A of the Regulation, the CHAMPUS Standards for Psychiatric Residential Treatment Centers Serving Children and Adolecents is set forth. This standard is quite thorough and provides for various organizational and administrative requirements, various treatment modulars and residential services plus certain requirements for even the physical plant. Various types of therapies are available in such an accredited facility. When Dr. Nowels testified about the differences between a hospital and a RTC, he emphasized the quality of the hospital staff as opposed to the RTC staff, indicating the greater individualized treatment to be received at a hospital. In reviewing the CHAMPUS standards, however, it is apparent that a RTC that is in compliance with these standards can provide adequate care and treatment even on a long-term basis for emotionally disturbed children who have sufficient intellectual potential for responding to active psychiatric treatment. Although had a learning disability, there is nothing in the record which would indicate that he did not have the sufficient intellectual potential for responding to active psychiatric treatment, which in fact he did while at the hospital.

In reviewing the hospital records, it appears that from his admission that 's Individualized Treatment Plan was established so that he would be in long-term placement at the hospital. Everything that the hospital provided for was rendered with the indication that he would be a resident at the facility for at least one year. All of their testing and planning was geared to have move from one level to another with the final goal to have him placed at home. There was no contemplation of any other placement. One can only conclude that the hospital personnel never considered referring to a RTC prior to his being placed at home.

The physicians and other staff at the Grant Center Hospital are very competent and steadfast in their determinations; however, the rules and regulations of the CHAMPUS program require the necessity of adequate documentation in order to prove the need for medical services and supplies within the frame work of the CHAMPUS guidelines for the rendering of mental health care. The claimant has failed to meet its burden of proof necessary to adequately establish that inpatient hospitalization was the appropriate level of care as required in the medically necessary treatment of the beneficiary in excess of sixty days after admission.

The hospital indicated that the reviews conducted by the CHAMPUS Peer Reviewers were not adequate, in that they did not spend as much time on the review process as did the hospital reviewers. It should be noted, however, that the CHAMPUS Peer Re-

viewers did in fact conduct two reviews of the entire record and made specific findings regarding 's condition which would indicate that he was not a threat to himself or others, and one reviewer noted that the patient had ground privileges and extended leaves of absenses from early in his hospital stay. (Exhibit 19, page 18) The hospital also criticized one particular Peer Reviewer for his assessments regarding occasional hospitalization. Again, this is only one reviewer's opinion and was not the opinion of the other reviewers, and the review cannot be totally disregarded because of one portion of it which might indicate something controversal.

The hospital also has taken the position that it is entitled to sixty days of hospitalization in the year 1984. Its attorney stated that the only criteria for the initial sixty days of inpatient hospitalization for mental health care was that it be in the same calendar year. This is, however, an incorrect position, the CHAMPUS guidelines regarding the payment for medically necessary services and supplies required in the diagnosis of treatment of illness or injury always must be applicable to any claim for benefits during any time period.

It is apparent that the beneficiary was in need of inpatient hospital services for mental health care during the initial sixty days of his hospital stay, but that subsequent to May 13, 1983, inpatient hospitalization was not the appropriate level of care required for medically necessary treatment and as such not a covered benefit under the CHAMPUS Basic Program. This medical necessity decision made by OCHAMPUS was based on opinions from reviewing physicians through the American Psychiatric Association Peer Review and is appropriate pursuant to CHAMPUS regulations. The level of institutional care provided the beneficiary was above the appropriate level required to provide necessary medical care. According to CHAMPUS regulations, if an appropriate lower leve care facility is adequate but not available in the general locality, benefits may be continued in the higher level facility but CHAMPUS institutional benefit payments shall be limited to the reasonable cost that would have been incurred in the appropriate lower level facility as determined by the Director. There was no evidence which would indicate the unavailability of such lower care facilities; therefore, this exception would not be applicable. A residential treatment center accredited by OCHAMPUS and in compliance with the CHAMPUS standards as set forth in the Regulation would have been the appropriate level of institutional care for subsequent to May 13, 1983.

SUMMARY

As Hearing Officer, the undersigned is authorized to conduct CHAMPUS hearings in compliance with Department of Defense Regulations as well as with policy statements operating manuals, CHAMPUS handbooks, instructions, procedures and other guidelines issued by the Director in effect at the time the services and/or supplies were provided. Based upon the facts as indicated by the evidence

set forth in the Exhibit File and the testimony established at the hearing and in conjunction with the above-cited authorities, the Hearing Officer must recommend that the determination of OCHAMPUS as set forth in its Formal Review be upheld and the claim of the Grant Center Hospital be denied. The inpatient medical services and supplies rendered the beneficiary by the Grant Center Hospital from May 14, 1983 to March 23, 1984 are not covered benefits under the CHAMPUS Basic Program. All of the claims submitted for these services less the beneficiary's required twenty-five percent cost share which approximates the amount in dispute in this case of $91,500.00 are hereby denied as being not covered benefits under the CHAMPUS Basic Program.

VALENTINO D. LOMBARDI
Hearing Officer
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Date: December 10, 1984