

DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
Social Security Administration  
OFFICE OF HEARINGS AND APPEALS

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DECISION

THE CASE OF

[REDACTED]  
(Appellant)

[REDACTED]  
(Beneficiary)

CLAIM FOR

Hospital  
Insurance Benefits

[REDACTED]  
(HICN)

CT PEER REVIEW ORGANIZATION  
(Intermediary/PRO/HMO/CMP)

JURISDICTION AND PROCEDURAL HISTORY

This case is before me on a timely request for a hearing. However, no hearing was held because it was determined that a fully favorable determination could be issued based solely on the documentary evidence of record. The appellant's representative, Legal Assistance to Medicare Patients submitted a memorandum in support of the appellant's claim for Medicare coverage.

The provider, [REDACTED] Hospital, notified the beneficiary on February 19, 1992, that his hospital stay commencing February 20, 1992, was not covered under Medicare because it was determined that he did not require a hospital or skilled nursing facility level of care, but only custodial care (Exhibit 1). This decision was upheld at the initial and reconsideration levels by the Connecticut Peer Review Organization (Exhibits 2 and 4). On October 4, 1993, the appellant through his representative filed a timely request for a hearing (Exhibit 5).

ISSUES AND APPLICABLE LAW

The general issue presented is whether payment may be made on the beneficiary's behalf for in-patient services which he received commencing February 15, 1992. The specific issues are whether or not it was medically necessary for the beneficiary to receive treatment for diagnostic study as a hospital in-patient or at a

skilled nursing facility during the period in question pursuant to 42 CFR 409.31; and if so, whether or not a skilled nursing facility bed was available pursuant to 42 CFR 412.42(c)(1).

If it is determined that in-patient hospital care or skilled nursing care was not required, it must next be determined whether payment for such services may be made pursuant to section 1879 of the Social Security Act.

#### EVALUATION OF THE EVIDENCE

The beneficiary was a 92-year-old gentleman who was admitted to the [redacted] Hospital on February 15, 1992, because of advanced dementia due to Alzheimer's disease, diabetes mellitus, anemia, and a history of GI bleed (Exhibit 6, page 4). Upon admission he was agitated and had persistent urinary incontinence. He was taking Haldol and Navane for his Alzheimer's disease. While hospitalized, the beneficiary underwent numerous tests including blood, glucose, and BUN. Additional blood tests were ordered on May 21 and June 12, 1992. A chest x-ray taken on February 17, 1992, showed bronchopneumonia with possible aspiration. Throughout his hospital stay, the beneficiary's hematocrit was well below normal limits. He also developed multiple skin tears on his hands and arms which required periodic dry sterile dressings. Throughout the period he was uncooperative and combative. He later developed a decubitus ulcer on his left elbow which required ongoing attention. His incontinence and extensive skin breakdown required ongoing infection prevention. His dementia and combativeness required that his Haldol medication be monitored closely.

The record shows that the claimant was a severely impaired and frail individual. It should be noted that at the time of his hospital discharge on December 7, 1992, his attending physician certified that he continued to require a skilled nursing facility level of care. Placement in a nursing facility which offered only custodial care was ruled out (Exhibit 6, page 1,000).

As early as February 20, 1992, the claimant was referred for skilled nursing home placement (Exhibit 6, page 9). Thereafter, the record shows that although the claimant was awaiting transfer to a skilled nursing facility, no beds became available until December 4, 1992, and he was eventually transferred to one on December 7, 1992 (Exhibit 6, pages 22, 23, 24 and 25).

Dr. Daniel McNally, a medical expert, was asked to respond to certain interrogatories (Exhibit 7). In a report dated December 20, 1994, Dr. McNally indicated that he reviewed the entire record pertaining to the beneficiary's hospitalization

[REDACTED]

from December 15, 1992, to December 7, 1992 (Exhibit 9). In his opinion, the beneficiary required skilled nursing care for two periods while he was hospitalized. The first was for 10 days commencing February 16, 1992, when he had an episode of unresponsiveness and was suspected of having aspirated. The second period was for approximately three weeks following an episode on April 12, 1992, when the beneficiary developed a fever of 102 and a cough.

I do not find Dr. McNally's opinion to be conclusive because his response is silent as to the beneficiary's well documented skin condition, chronic incontinence, combative nature, and the requirement that his Haldol be monitored closely. Moreover, I am giving more weight to the beneficiary's treating physician's opinion regarding the necessity for skilled nursing care. Also because of the beneficiary's multiple conditions and advanced age, a finding that he required skilled care and treatment is not unreasonable.

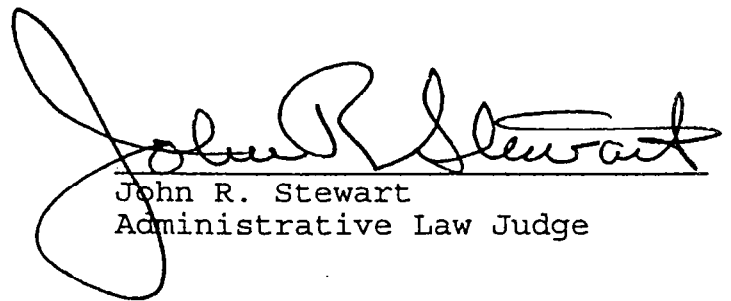
Based on the preceding discussion, it is determined that from February 15, 1992, through December 7, 1992, the beneficiary required either a hospital level of care, or skilled nursing care. Also, during this period, the beneficiary's family was actively seeking placement in a skilled nursing facility but a bed did not become available until December 7, 1992.

#### FINDINGS

1. The beneficiary received in-patient hospital treatment at S [REDACTED] Hospital from February 15, 1992, to December 7, 1992.
2. During the period cited above, the beneficiary required and received treatment of a skilled nature which as a practical matter, could only be provided in a hospital or skilled nursing facility on an inpatient basis (42 CFR 409.31).
3. As early as February 20, 1992, the beneficiary was referred for skilled nursing home placement, but a bed did not become available until December 4, 1992 (42 CFR 412.42(c)(1)).

DECISION

Payment may be made on the late beneficiary's behalf under Part A of Title XVIII for the services furnished to him by S [REDACTED] Hospital from February 15, 1992, through 250 days of his stay which includes 150 days hospital coverage and 100 days of skilled nursing facility coverage.

  
John R. Stewart  
Administrative Law Judge

JUL 14 1995

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Date

JRS/dsc