



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

16 NOV 1979

HEALTH AFFAIRS

FINAL DECISION:

Case  
OASD(HA) Appeal File 12-79

The Hearing File of Record, the tape of the oral testimony presented at the hearing, and the Hearing Officer's RECOMMENDED DECISION (along with the Memorandum of Concurrence from the Director, OCHAMPUS) on OASD(HA) Appeal Case No. 12-79 have been reviewed. The amount in dispute in the case is \$1700.00. It was the Hearing Officer's recommendation that the CHAMPUS Contractor's initial decision to deny the appealing party's undated Request for Preauthorization of dental services (fillings, root canal, crowns, extractions and partial dentures) be upheld. It was his finding that the dental care in dispute did not constitute adjunctive dental care as provided by CHAMPUS Regulation DoD 6010.8-R. The Principal Deputy Assistant Secretary of Defense (Health Affairs), acting as the authorized designee for the Assistant Secretary, concurs with this recommendation and accepts it as the FINAL DECISION.

PRIMARY ISSUE

The primary issue in dispute in this case is whether the dental care for which preauthorization was requested constituted "adjunctive dental care." By law CHAMPUS benefits for dental care are limited. Chapter 55, Title 10, United States Code, Section 1079 (a) states "...with respect to dental care, only that care required as necessary adjunct to medical or surgical treatment may be provided." The implementing regulation (applicable at the time the Request for Preauthorization was received) defines adjunctive dental care to be, "...that dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, and is essential to the control of the primary medical condition. Adjunctive dental care does not include preventive, routine, restorative or prosthodontic care..." (Reference: CHAMPUS Regulation DoD 6010.8D, CHAPTER II, Subsection B.6.)

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The attorney (along with the physician-witness and the sponsor) raised many points in arguing that CHAMPUS benefits should be extended. However, it is the finding of the Principal Deputy Assistant Secretary of Defense (Health Affairs) that the Hearing Officer's RECOMMENDED DECISION was a proper one based on the evidence presented and that his rationale and findings were substantially correct. To be sure that the appealing party fully understands the underlying bases upon which the initial denial is being reaffirmed and upheld, each of the points presented is addressed in this FINAL DECISION.

- o Diagnosis: Throat Cancer. When the Request for Preauthorization was initially submitted, and up through the first two appeal levels (Informal Review and Reconsideration), it was claimed that the proposed dental care qualified as "adjunctive" because it was related to the throat cancer condition for which the appealing party was operated in February 1976. Since tests had been negative as to the presence of cancer after completion of the cobalt therapy there was no active medical condition being treated. However, even if the cancer treatment was still in process, the presence of a medical condition does not of itself automatically qualify dental care as adjunctive. What must be shown is "... that the dental care is medically necessary in the treatment of the medical condition, is an integral part the treatment of such medical condition and is essential to the control of the primary medical condition." Such relationship to the treatment of the throat cancer was not documented. Having the dental work done in no way treated the cancer. [emphasis added] (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Subsection E. 10.)
- o Deterioration of Teeth: Result of Cobalt Therapy. It was also initially claimed that the need for the requested dental care was the direct result of a series of 20 to 30 cobalt treatments following surgery for the throat cancer, which caused a deterioration of the appealing party's teeth. Except for the personal statements of the physician-witness, no evidence was submitted as to the state of the appealing party's teeth prior to the cobalt therapy. However,

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even if a causal relationship could be proven, specific language in the CHAMPUS regulation excludes any dental care "... required as a result of an accidental injury or whether injured, affected or factured during the medical or surgical management of a medical condition." [emphasis added] (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section E, Subparagraph 10.b.(3).)

- o Diagnosis: Hiatal Hernia. Beginning with the the agency level appeal, i.e., OCHAMPUS First Level Review, the appealing party changed the basis of her appeal. She then claimed instead of the cancer condition, that symptomatology related to a hiatal hernia (which had been diagnosed prior to the throat cancer surgery) had been aggravated by her decreased masticatory capability. Her physician testified that she had been and was currently under conservative medical management consisting of a bland diet, antacids and anti-spasmodic medications. While the physician witness admitted that even if the requested dental care were performed it would not change the current treatment for the hiatal hernia, he did state that in his judgement it would tend to ameliorate future complications from the hiatal hernia condition. This statement actually tends to support the peer review findings, i.e., that while improved mastication is desirable, it will not have a direct effect on the hiatal hernia or relieve gastrointestinal symptoms. Again, the presence of the hiatal hernia is not questioned-- but this is not sufficient to qualify the requested dental care as "adjunctive." What must be documented is that the requested dental care was directly related to and an integral part of the treatment of the hiatal hernia, which was not done in this case. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Subsection E. 10.)
- o Improved Mastication. It was also generally claimed that the requested dental care (primarily restoration and prosthodontic services) would improve mastication, and that while this was desirable from the standpoint of the hiatal hernia, it would also generally improve her overall nutrition by enabling the appealing party

to chew better so that smaller food particles would enter the digestive system. The extent of the described masticatory problem could not be determined from the Hearing File of Record. However, the question is actually moot because even if the appealing party's mastication could be proved to be severely impaired, dental services primarily "to assist in mastication, whether or not related to gastrointestinal or hemopoietic diseases [are not covered]." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section E, Subparagraph 10.b.(4).)

- o Preventive. It was also claimed that because the requested dental work would improve mastication it could be expected to ameliorate (i.e., "prevent") future complications of the hiatal hernia. By "preventing" the development of such medical complications [it was implied], the requested dental work thus qualified as "adjunctive." The question of "prevention" can be argued since no documentation was submitted which supported this position. However, again the question is moot. Even if it is assumed that good dental health directly improves nutrition, which in turn might have a long term beneficial effect on the overall health of an individual, this would not qualify the requested dental care as "adjunctive." The regulation excludes that dental care which is essentially preventive regardless of its purpose. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section E, Subparagraph 10.b.(1).)
- o Dental Condition Only. Despite claims to the contrary, the only condition present was a dental condition affecting the teeth or their structures, i.e., dental carries, missing teeth, etc. The requested dental care was not medically necessary to, or an integral part of, current treatment of any medical condition. By definition, dental care related to a dental only condition cannot qualify as "adjunctive." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsection B.6.)
- o Type of Dental Care Requested Specifically Excluded. Finally, notwithstanding any other facts in this case,

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the type of dental work in dispute (i.e., primarily restorative and prosthodontic services) is specifically excluded by Regulation. This is because it is the Program's position that this type of dental work never treats a medical condition and thus is always non-adjunctive. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section E, Subparagraph E.10.(3).)

Our findings indicate there was no evidence presented in the Hearing File of Record or in the oral testimony presented at the hearing which supported the appealing party's claim that the requested dental care (fillings, crowns, root canal, extractions and partial dentures) met the definition of "adjunctive dental care." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsection B.6.)

#### SECONDARY ISSUES

The appealing party's attorney, her sponsor and the physician-witness raised several secondary issues which, it was asserted, supported special consideration to extend CHAMPUS benefits in this case.

1. Other Similar Cases Paid: Discrimination. The appealing party's sponsor claimed he had personal knowledge of similar cases being paid by CHAMPUS and that denial in this instance represented discriminatory action on the part of the Government. Since no details were provided relative to payment of the alleged "similar" cases, no comments can be made on any specific case. (If the appealing party or her sponsor wish to provide information on any such cases, CHAMPUS will review them to determine if benefits have been paid in error.) However, notwithstanding the fact that such an error may have occurred, it has no bearing on the FINAL DECISION in this case. The Program is not bound by errors that may have been made by its employees or those of its agents. The decision in this appeal case must be made on its own merits, in compliance with the law and applicable regulation controlling.
2. Long Period of Time in Appeal. The appealing party's sponsor also complained about the long period of time involved in getting a case through the appeal system to a FINAL DECISION. This is a legitimate complaint and one the Department of Defense is aware of and efforts

are being made to improve the situation. However, it must be recognized that the formal CHAMPUS Administrative appeals system is relatively new and only recently became operational at all levels. Procedures and staffing requirements are still in the developmental stages. It should also be kept in mind that had there been no formal appeal system available, the appealing party would not have been afforded a hearing or an appellate review by the Office of the Assistant Secretary of Defense (Health Affairs). While the delays in the current system are acknowledged, this cannot impact the decision in the case--it must be viewed in keeping with the law and applicable regulations.

3. Right to Free Dental Care. The appealing party's sponsor also claimed that as a Military retiree he had earned "free" dental care for his dependents. He complained that the Army post located in his area did not offer dental care to dependents of retirees, therefore implying it should be covered by CHAMPUS. First of all the sponsor is in error concerning the promise of "free" dental care. The law has never guaranteed that dental (or medical) care will be provided to retirees' dependents at all Uniformed Service facilities. It only provides that such care may be provided if space is available. Further, except overseas or in a U.S. facility designated as remote, even where space is available, dependents are limited to emergency dental care only.
  
5. Challenge to Peer Review. The appealing party's attending physician, in his oral testimony, stated he did not consider peer review to be a proper means of evaluating a case and that the physician who is in attendance is best able to render judgements in regards to the needs of the patient. It is pointed out that the opinion of an attending physician (as this case illustrates) is considered in any case review, but it is not controlling. It is further pointed out that the general medical community accepts peer review as the most adequate means of providing information and advice concerning medical matters which may be in question. This method is endorsed by the

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American Medical Association. Further, many times it is not a question of whether a particular service is appropriate or "needed," rather it is a Program coverage issue. Sometimes a service simply is not covered regardless of its merits. The CHAMPUS appeals process provides an opportunity for all concerned to present facts relative to a case. All evidence is carefully considered in rendering a FINAL DECISION.

SUMMARY

This FINAL DECISION in no way implies the appealing party does not need the requested dental services nor that having the dental work performed would not contribute to her general good health. It only confirms that the dental services in dispute do not qualify as "adjunctive" as permitted by law and regulation, and therefore, cannot qualify for benefit consideration under CHAMPUS.

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Issuance of this FINAL DECISION is the concluding step in the CHAMPUS appeals process. No further administrative appeal is available.

  
Vernon McKenzie  
Principal Deputy Assistant  
Secretary of Defense  
(Health Affairs)