



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

DEC 12 1984

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) File 83-29
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 83-29 pursuant to 10 U.S.C. 1071-1092 and DoD 6010.8-R, chapter X. The appealing party is the CHAMPUS beneficiary, the wife of a retired enlisted member of the United States Army. The appeal involves claims for physiotherapy treatments, corn removal, and routine podiatry care for both feet received from January 23, 1978, through July 21, 1981.

Claims for routine podiatry services that preceded, as well as services rendered concurrently with, the initial 60-day period for physical therapy were originally allowed. CHAMPUS denied cost-sharing of all claims for services received after June 12, 1978. The amount in dispute is \$1,092.00 in billed charges, including \$175.00 in charges that were submitted during the appeal.

The hearing file of record, the tape of oral testimony and the argument presented at the hearing, the Hearing Officer's Recommended Decision, and the Analysis and Recommendation of the Director, OCHAMPUS, have been reviewed. It is the Hearing Officer's recommendation that the First Level Appeal determination by OCHAMPUS denying coverage of physical therapy following the initial 60-day period of therapy be upheld on the basis that the care was not medically necessary. The Hearing Officer found that the beneficiary had established that she had a systemic medical disease, Charcot-Marie-Tooth disease, affecting her lower limbs which caused her foot condition; therefore, the Hearing Officer concluded that the CHAMPUS exclusion of corn removal and routine podiatry services did not apply. The Hearing Officer, however, found there was no showing of medical necessity for the corn removal and routine podiatry care or physical therapy after the end of the initial 60-day period of physical therapy, and recommended denial of CHAMPUS cost-sharing of the claims involved. The Director, OCHAMPUS, does not concur with the Hearing Officer's Recommended Decision to deny CHAMPUS cost-sharing of care after the initial 60-day period.

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

The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, adopts the recommendation of the Director, OCHAMPUS, to allow CHAMPUS cost-sharing of all treatment. The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to allow CHAMPUS cost-sharing of all claims in dispute involving corn removal, routine podiatry services, and physical therapy.

#### FACTUAL BACKGROUND

The appealing party is the wife of a retired enlisted member of the United States Army. On July 27, 1979, the beneficiary signed a CHAMPUS claim and submitted it to the CHAMPUS Fiscal Intermediary, Blue Cross of Rhode Island, for care received from Samuel S. Norway, D.P.M., from January 23, 1978, through June 19, 1979. Subsequently, additional claims were filed with the CHAMPUS Fiscal Intermediary for care received from Dr. Norway through September 16, 1980.

Dr. Norway, the attending podiatrist, described the patient's condition in a letter dated January 27, 1981, as follows:

"[The beneficiary] was born with a slight club foot deformity. She has metatarsus adductus and osteo arthritis [sic].

"She also develops inflamed plantar corns on her right and left foot overlying tibial sesamoids because of her condition."

The CHAMPUS claims indicate frequent office visits with occasional physical therapy, consisting of whirlpool and ultrasound treatments, and protective padding of the feet. In addition, the beneficiary received several steroid injections. The following is an itemization of treatments received and CHAMPUS payments. Abbreviations used in the itemization are OV (Office Visit), W (Whirlpool), and US (Ultrasound).

<u>Dates</u>	<u>Services</u>	<u>Claim</u>	<u>Allowed</u>
1-23-78	OV	\$ 13.00	\$ 13.00
2-23-78	OV	13.00	13.00
3-11-78	OV	13.00	13.00
4-6-78	OV	13.00	13.00
4-14-78	W, US, OV	17.00	17.00
5-19-78	W, US, OV	17.00	17.00
5-26-78	corticosteroid	10.00	10.00
6-5-78	W, US, OV	17.00	17.00
6-16-78	OV	13.00	13.00

<u>Dates</u>	<u>Services</u>	<u>Claim</u>	<u>Allowed</u>
7-3-78	OV (Anti-inflammation medication)	13.00	13.00
7-22-78	OV	13.00	13.00
8-12-78	OV	13.00	13.00
9-7-78	OV	13.00	13.00
10-10-78	W, US, OV	17.00	13.00
11-9-78	OV	15.00	15.00
11-27-78	OV	15.00	15.00
12-22-78	OV	15.00	15.00
2-6-79	OV	15.00	15.00
3-6-79	OV	15.00	15.00
4-3-79	OV	15.00	15.00
4-30-79	W, US, OV	19.00	15.00
5-21-79	W, US, OV	19.00	15.00
6-18-79	W, US, OV	19.00	15.00
6-19-79	W, US, OV	19.00	15.00
7-5-79	W, US, OV	19.00	15.00
7-23-79	W, US, OV	19.00	15.00
8-6-79	Corticosteroid	10.00	4.00
	OV	15.00	15.00
8-13-79	W, US, OV	19.00	15.00
9-16-79	W, US, OV	19.00	15.00
9-18-79	Soft orthotic to correct foot posture and relieve pressure	125.00	0.00
9-27-79	OV	15.00	15.00
10-5-79	OV	15.00	15.00
10-22-79	W, US, OV	20.00	Not processed
11-2-79	W, US, OV	20.00	0.00
11-15-79	W, US, OV	20.00	0.00
11-29-79	W, US, OV	20.00	0.00
12-28-79	W, US, OV	20.00	0.00
1-18-80	W, US, OV	20.00	0.00
2-7-80	W, US, OV	20.00	0.00
2-26-80	W, US, OV	20.00	0.00
3-13-80	W, US, OV	20.00	0.00
3-20-80	W, US, OV	20.00	0.00
5-8-80	W, US, OV	20.00	0.00
6-20-80	W, US, OV	20.00	0.00
7-15-80	W, US, OV	20.00	0.00
8-4-80	W, US, OV	20.00	0.00
9-16-80	W, US, OV	20.00	0.00
Total		<u>\$917.00</u>	<u>\$450.00</u>

Of the \$450.00 allowed on the claims, the CHAMPUS Fiscal Intermediary paid \$255.75 as the CHAMPUS cost-share after deducting \$65.00 for deductibles for fiscal years 1978 and 1979 and \$96.25 as the patient's cost-share.

Although the CHAMPUS Fiscal Intermediary cost-shared the office visits from January 23, 1978, through October 5, 1979, physical therapy (whirlpool and ultrasound treatments) was cost-shared only for the initial 60-day period (April 14, 1978, through June 12, 1978) of physical therapy. All other physical therapy sessions were disallowed as exceeding the general limitation in the CHAMPUS regulation for coverage of outpatient physical therapy; i.e., up to 60-days of physical therapy unless the attending physician can document the medical necessity and reasonably anticipated results of extended therapy.

The beneficiary appealed the fiscal intermediary's decisions partially denying her claims. During review of this appeal, Dr. Norway provided the following information regarding the necessity for physical therapy:

"Patient has metatarsus adductus. This causes inflamed corns to occur plantar to tibial sesamoid [sic].

"These are removed periodically & padded to keep pressure off of enlarged tibial sesamoids.

"Ultrasound is used to relieve swelling & edema of patient plantar to corns [sic].

"Patient is [then] able to walk comfortably for a period of time."

Following review of the medical documentation submitted by Dr. Norway, the medical advisory staff of the fiscal intermediary supported the denial of extended physical therapy. The beneficiary's appeal was denied by the fiscal intermediary both at the informal review level and at the reconsideration level.

In support of the beneficiary's appeal to OCHAMPUS, Dr. Norway submitted a letter dated July 25, 1981, containing the following:

"Diagnosis: Pes Cavus. Metatarsus adductus right and left foot with hammering of 2, 3, 4, 5 toes. Patient develops severely inflamed [sic] nucleated corns plantar 1 and 5 Metatarso-Phalangeal articulations. Patient has been injected intra lesionally with cortico steroids.

"Treatment: Removal of corns, whirlpool, ultra sound to relieve inflammation of lesions and pain of tibial sesamoids. Patient is

wearing an appliance to relieve pressure and also wears pads of felt after treatment.

\* \* \*

"This patient walks better after an office visit with physio-therapy and is able to ambulate without pain.

"This is not a matter of physio-therapy alone but complete treatment which is necessary to patient's feet and well being."

Dr. Norway's letter also enclosed a CHAMPUS claim for additional treatment sessions not previously filed with the CHAMPUS Fiscal Intermediary. These sessions occurred on January 22, February 16, March 20, April 28, May 19, June 15, and July 21, 1981. Each session involved the removal of corns, ultrasound treatment, and the application of protective padding. The billed charge for each session was \$25.00, for a total charge of \$175.00. Because the treatment was the same type of care and part of the same episode of care, the additional claim has been consolidated in the beneficiary's appeal.

OCHAMPUS requested a medical review of the claims by the Colorado Foundation for Medical Care. The two reviewers, one a specialist in internal medicine and one a specialist in podiatric medicine, opined that the physical therapy was an acceptable mode of therapy for the patient's condition of "tibial sesamoiditis with associated capsulitis of the 1st MP articulation." The reviewers further opined that:

"Physical therapy may be of some value to a patient with this condition, but generally it would only be of short term value. To be effective, therapy would ordinarily be administered 2 to 3 times per week for 2 or 3 weeks. Giving intermittent therapy over an extended period of time is not considered effective therapy."

The OCHAMPUS First Level Appeal determination noted that benefits for physical therapy beyond the 60-day period were denied by the fiscal intermediary on the basis that the medical necessity for such care had not been established. Based upon a review of the medical evidence and claims history, the First Level Appeal upheld the denial by the fiscal intermediary. The beneficiary then requested a hearing, which was held on September 22, 1982, in Newark, New Jersey, before OCHAMPUS Hearing Officer, Mr. Edward Finkelstein.

Prior to the hearing, OCHAMPUS placed in issue the partial payment of the beneficiary's claims as being erroneous due to the Regulation's exclusion of coverage of corn removal and other

routine podiatry services. At the hearing, the appealing party argued that the care was not routine based on a letter from her new treating podiatrist, Harold S. Estersohn, D.P.M. Dr. Estersohn's letter dated September 21, 1982, states:

"This is a 46 year old female complaining of pain underneath the 1st metatarsal bi-lateral, right worse than left.

"Past medical history consisted of going to a podiatrist since she was 16 years old. She had cardiac bi-pass [sic] surgery done December 28, 1981, and was diagnosed as Charcot Marie Tooth Disease by Dr. Chow, M.D.

"Examination reveals mid-equinus type foot with plantar flexed 1st metatarsal bi-lateral and underlying intractable plantar keratosis. She has met=adductus [sic] with contracted lesser toes and hallux abductus [sic] bi-lateral. Xrays confirmed the diagnosis of mid-foot equinus with plantar flexed 1st metatarsal bi-lateral.

"In my opinion this patient had a neurological osseous foot condition due to Charcot Marie Tooth Disease which created the plantar flexed 1st metatarsal and underlying plantar keratosis creating a painful syndrome. Since she had bi-pass [sic] surgery recently, surgical correction of this condition is not feasible. Conservative therapy has been attempted to give her some relief of this pain from her foot problem."

The Hearing Officer has issued his Recommended Decision and all prior levels of administrative review have been exhausted. Issuance of a FINAL DECISION is, therefore, proper.

#### ISSUES AND FINDINGS OF FACT

The primary issues in dispute are (a) whether the corn removal and routine podiatry care received during office visits from January 23, 1978, through July 21, 1981, are specifically excluded from CHAMPUS coverage by the Regulation; and (b) whether physical therapy provided after 60 days was medically necessary.

#### Podiatry Services

In general, podiatrists are recognized as authorized, individual providers of care under CHAMPUS. The CHAMPUS regulation, DoD 6010.8-R, chapter VI, C.3.c.(3), authorizes payment, on a fee-for-services basis, of services of a Doctor of Podiatry Medicine provided such services are otherwise authorized CHAMPUS benefits.

Benefits available under the CHAMPUS Basic Program are described in DoD 610.8-R, 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. . . ."

The Regulation defines "medically necessary" in chapter II, B.104., as:

". . . the level of services and supplies (that is, frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury, . . . . Medically necessary includes concept of appropriate medical care."

Appropriate medical care is defined in DoD 6010.8-R, chapter II, B.14., 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."

Finally, as concerns podiatry services, DoD 6010.8-R, chapter IV, G.31., specifically excludes from CHAMPUS coverage:

"Removal of corns or calluses or trimming of toenails, and other routine podiatry services, except those required as a result of a systemic medical disease affecting the lower limbs, such as severe diabetes."

The Hearing Officer summarized the beneficiary's condition and treatment as follows:

"[The beneficiary] who was born with a slight club foot deformity, received physical therapy treatment from Samuel S. Norway, D.P.M., from January 23, 1978, through September 16, 1980, for metatarsus adductus, sesamoiditis and osteoarthritis in her right and left feet . . . . The beneficiary developed inflamed plantar corns on her right and left feet overlying tibial sesamoids because of her condition. Treatments were usually bi-weekly, consisting of whirlpool, ultrasound, removal of corns, protective

padding of feet and steroid injections (five times from January, 1978, through December, 1979)."

The Hearing Officer found that the beneficiary was diagnosed as having Charcot-Marie-Tooth disease, a systemic medical disease, which caused her foot condition and, in turn, the development of corns on her feet. Therefore, he found that the beneficiary's foot care was not per se excluded from CHAMPUS coverage as routine podiatry care. I concur and adopt the Hearing Officer's findings.

#### Physical Therapy

The CHAMPUS regulation, DoD 6010.8-R, chapter IV, C.3.j., specifically addresses coverage of physical therapy, in part, as follows:

"To be covered, physical therapy must be related to a covered medical condition. If performed by other than a physician, the beneficiary/patient must be referred by a physician and the physical therapy rendered under the supervision of a physician.

"(1) Outpatient physical therapy is generally limited to a sixty (60) day period, two (2) physical therapy sessions per week, in connection with each medical condition. In order for CHAMPUS benefits to be extended for physical therapy rendered for a longer period of time than sixty (60) days, and/or for more than two (2) sessions per week, requires submission by the attending physician of documentation as to medical necessity and the reasonably anticipated results of such therapy."

Dr. Norway provided physical therapy (i.e, whirlpool and ultrasound treatments) beginning on April 14, 1978, and continuing intermittently through July 21, 1981. On the 54 dates of care billed by Dr. Norway, 34 sessions of physical therapy were included.

The CHAMPUS regulation requires "submission of documentation as to the medical necessity and the reasonably anticipated results of such therapy" that exceeds a 60-day period and/or more than two sessions per week. The most pertinent documentation submitted on this issue was Dr. Norway's letter of July 25, 1981, which states, in part, the following:

"Treatment: Removal of corns, whirlpool, ultra sound to relieve inflammation of lesions and pain of tibial sesamoids. Patient is



wearing an appliance to relieve pressure and also wears pads of felt after treatment.

\* \* \*

"This patient walks better after an office visit with physio-therapy and is able to ambulate without pain.

"This is not a matter of physio-therapy alone but complete treatment which is necessary to patient's feet and well being."

The Hearing Officer found that physical therapy provided by Dr. Norway following the initial 60-day period was not medically necessary as required by the CHAMPUS regulation. I disagree with the Hearing Officer and reject his finding.

Although it is difficult to determine the medical necessity or appropriateness of Dr. Norway's services from the limited information he provided, I find the information from Dr. Estersohn and the testimony at the hearing establish the medical necessity of the disputed care. The record supports findings with respect to a systemic disease, chronicity of the condition, and the need for long term therapy of the general type the beneficiary has been receiving.

Based on his finding that Dr. Norway's treatment plan following the initial 60-day period was not medically necessary, the Hearing Officer also recommended denial of CHAMPUS coverage of all services, including podiatric services, received after June 12, 1978. Consistent with my finding that the physical therapy beyond 60 days was medically necessary, I reject the Hearing Officer's recommendation to deny CHAMPUS coverage of corn removal and other podiatric services received after June 12, 1978.

#### SUMMARY

In summary, it is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) that the appealing party's CHAMPUS claims for physical therapy and podiatric services received from January 23, 1978, and July 21, 1981, may be cost-shared. The beneficiary's appeal is allowed.

  
William Mayer, Jr., M.D.