ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

HEALTH AFFAIRS

28 FEB 1985

BEFORE THE OFFICE, ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of [redacted])
)
Sponsor: [redacted]) OASD(HA) CASE FILE 84-15
) FINAL DECISION
SSN: [redacted])

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-15. It is issued pursuant to the authority of 10 U.S.C 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the beneficiary, the wife of a retired officer of the United States Army. The appeal involves the denial of CHAMPUS cost-sharing of the December 17, 1982, surgical removal of 26 teeth, with accompanying alveoloplasty and gingivoplasty. This surgery was performed to prepare the beneficiary's mouth for the treatment of cancer through radiation therapy. The professional charge for this procedure was $975.00 and the amount in dispute in this appeal is $731.25; i.e., $975.00, less the 25% beneficiary cost-share.

The hearing file of record, the recorded hearing testimony, 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 OCHAMPUS First Level Review determination which denied coverage of the dental procedures be upheld. The Hearing Officer's recommendation is based upon a finding that "the removal of the beneficiary's teeth was neither adjunctive dental care nor covered oral surgery within the meaning of the CHAMPUS Basic Program as provided in DoD 6010.8-R, chapter IV." The Director, OCHAMPUS, concurs in this Recommended Decision and recommends that it be adopted as the FINAL DECISION.

The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, rejects the recommendation of the Director, OCHAMPUS, and the Hearing Officer's Recommended Decision. The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs), therefore, is to allow CHAMPUS cost-sharing of the removal of the beneficiary's teeth on December 17, 1982.

FACTUAL BACKGROUND

The beneficiary was seen by her dentist on December 9, 1982, who immediately referred her to Dr. James E. McCornell, a specialist in surgery of the ear, nose, throat, and neck. Dr. McCornell diagnosed the beneficiary as suffering from invasive squamous cell carcinoma of the right retromolar trigone. She was referred to the Lawnwood Oncology Center for definitive radiation therapy of the lesion. She was seen on December 15, 1982, by Dr. C. Harry Kent, M.D., Director of the Oncology Center. Dr. Kent recommended that prior to the initiation of radiation therapy the beneficiary undergo a full tooth extraction with a subsequent healing period of approximately 2 weeks.

The attending physician described the beneficiary's dental condition as follows:

> "There is one upper tooth missing which has been replaced by a bridge. This is a tooth that the patient states approximately six months ago became infected upon two occasions and had to be extracted. Nearly all of her teeth have fillings. The upper center teeth, especially the left one, is cracked. The teeth themselves are also in only fair general repair. In addition, the patient does have the history of pyorrhea."

For these reasons the doctor felt it imperative that the beneficiary have full tooth extraction to "prevent radio-osteonecrosis should she have to undergo extraction for an apiral abscess of [sic] other infection after having completed her planned course of definitive radiation therapy."

The attending physician further explained the basis for his decision to recommend a full tooth extraction prior to the definitive radiation therapy in a subsequent submission to OCHAMPUS:

> "As you will note under the physical examination in the second paragraph of the Eye, Ears, Nose, Throat portion, the patient's teeth were generally in poor repair. In addition, the patient has a history of pyorrhea. The patient's risk of developing radio-osteonecrosis of the mandible was extremely high had we proceeded with radiation therapy and not had her undergo full tooth extraction.
>
> "In my opinion, radio-osteonecrosis of the mandible is one of the most debilitating side effects of radiation therapy. The pain from this is almost totally unbearable. The stench from the open infection is so bad that

the patients themselves have serious psychological problems from it. In addition, the patients visitors probably do not remain in the room longer than two to three minutes at the time because of the odor.

"I feel it would behoove your panel to have at least one of its members to visit with a patient having this problem in order to truly understand the situation. I do not feel that any panel who does not have this experience could come to a reasonable conclusion regarding the necessity for full tooth extraction prior to beginning the radiation treatments.

"The following information is to be found in the book 'Radiation Oncology Rationale, Technique, Results' by William T. Moss, William N. Brann and Hector Battifora. This is the Fifth Edition, page 90:

"'Patients at high risk for necrosis include alcoholics, heavy smokers, and patients with chronically poor nutrition or poor oral hygiene. In these patients the irradiated fragile mucosa covering the mandible sloughs more often, and mandibular necrosis follows. The first symptoms may be pain and tenderness of the gum or even of the entire mandible. The teeth may be suspected as the cause of the pain, and extraction may therefore be performed. There is no question that necrosis may be initiated occasionally by extractions. (Ng and associates).

"'The process of sequestration usually requires months or years. The associated severe pain, malnutrition, and foul breath make the care of these patients one of the most difficult problems in radiotherapy. Instruction in oral hygiene, advice and encouragement as to nutrition, and medication for pain form the basis for their care. Surgical removal of the damaged bone usually results in large soft tissue losses. For this reason conservative management should be followed if at all possible.'"

Based upon the recommendation of her attending physicians, the beneficiary was admitted to the Martin Memorial Hospital on December 16, 1982, for the surgical removal of all of her teeth. The hearing record suggests that this was the sole purpose of her admission and the only therapy she received during this admission. The procedure was performed on December 17, 1982, and

the beneficiary was discharged on December 19, 1982. The radiation therapy commenced on January 2, 1983, and was concluded on February 25, 1983. The beneficiary testified that the therapy was successful and she was fitted for dentures in September 1983.

The statements cited above by the beneficiary's attending physicians confirm her hearing testimony that the removal of her teeth was undertaken solely to prevent complications from the radiation therapy used in treating her cancer.

The hearing record contains no documents pertaining to CHAMPUS claims for hospital and other charges related to inpatient confinement for extraction of the beneficiary's teeth. Testimony at the hearing indicates that the CHAMPUS Fiscal Intermediary cost-shared the hospital charges although the one surgeon's fees were denied coverage.

The beneficiary's CHAMPUS claim for the services of the dental surgeon who performed the tooth extraction was denied by the fiscal intermediary because no preauthorization was obtained as required for CHAMPUS coverage of adjunctive dental care under CHAMPUS regulation, DoD 6010.8-R. This determination was appealed and again was denied by the fiscal intermediary in an Informal Review Decision dated February 7, 1983, and a Reconsideration Decision dated April 25, 1983. An appeal was made to OCHAMPUS on April 30, 1983.

The OCHAMPUS Formal Review Decision dated June 27, 1983, upheld the denial of CHAMPUS cost-sharing on two grounds. First, it found that the removal of the beneficiary's teeth was noncovered oral surgery which did not qualify as adjunctive dental care. Second, the previous denials were upheld because preauthorization of the dental care had not been obtained.

Subsequently, the beneficiary requested a hearing. The hearing was held in West Palm Beach, Florida, on December 28, 1983, and the Hearing Officer has submitted his Recommended Decision. All prior levels of administrative appeal have been exhausted and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are (1) whether the removal of 26 teeth in contemplation of treating the beneficiary for cancer of the mouth by radiation therapy qualifies for CHAMPUS cost-sharing as adjunctive dental care, and, (2) whether the removal of 26 teeth in contemplation of treating the beneficiary for cancer of the mouth by radiation therapy qualifies for CHAMPUS cost-sharing as oral surgery. The additional issue regarding the requirement for preauthorization has been rendered moot by the interim authorization of the Director, OCHAMPUS, to grant an exception to the requirement for preauthorization when the care would otherwise be payable except for the failure to obtain preauthorization.

Adjunctive Dental Care

In general, no dental care benefit exists under CHAMPUS. Pursuant to title 10, United States Code, section 1079, CHAMPUS cost-sharing of dental care is limited to care required only as a necessary adjunct to medical or surgical treatment. This statutory restriction on dental care finds implementation in the CHAMPUS regulation, DoD 6010.8-R, chapter IV, paragraph E.10., as follows:

> "Dental. The CHAMPUS Program does not include a dental benefit. Under very limited circumstances benefits are available for dental services and supplies when the dental services are adjunctive to otherwise covered medical treatment.
>
> "a. Adjunctive Dental Care: Limited. Adjunctive dental care is limited to that dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition.
>
> "(1) Elimination of a non-local oral infection (such as cellulitis or osteitis) which is clearly exacerbating and directly affecting a medical condition currently under treatment would be an example of adjunctive dental care.
>
> "(2) Another example of adjunctive dental care would be where teeth and tooth fragments must be removed in order to treat and repair facial trauma resulting from an accidental injury.
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> "NOTE: The test of whether or not dental trauma is covered is whether or not the trauma is solely dental trauma. Dental trauma must be related to, and an integral part of, medical trauma in order to be covered as adjunctive dental care.
>
> "b. General Exclusions. Generally, preventative, routine, restorative, prosthodontic and/or emergency dental care are not covered by CHAMPUS.
>
> "(1) Dental care which is essentially preventative and (even if performed to prevent a potential medical condition) which is not an integral part of the treatment of a

> medical (not dental) condition, does not qualify as adjunctive dental care for the purposes of CHAMPUS. An example would be routine dental care provided a rheumatic heart patient as a 'preventative' measure.
>
> "(2) Adjunctive care does not include dental services which involve only the teeth and/or their supporting structure, even if the result of an accident. An example would be the child who falls and breaks, chips or loosens a tooth.
>
> "(3) Adjunctive dental care does not include restoration or peridontal splinting of teeth and/or dental prosthesis, whether permanent or temporary and whether required as a result of an accidental injury or whether injured, affected or fractured during the medical or surgical management of a medical condition.
>
> "(4) Adjunctive care does not include treatment of peridontal (sic) disease and/or the consequence of peridontal (sic) disease; nor does it include such dental services as filling cavities or adding or modifying bridgework to assist in mastication whether or not related to gastrointestinal or hematopoietic diseases.
>
> "(5) All orthodontia is specifically excluded, except when directly related to and as an integral part of, surgical correction of a cleft palate congenital anomaly."

These provisions, then, exclude coverage of dental care which is essentially preventative and which is not an integral part of the treatment of a medical condition; or care which involves only the teeth and their supporting structure; as well as restorative care of teeth when injured or affected during the medical or surgical management of a medical condition.

As found by the Hearing Officer, the essential facts in this appeal are undisputed. The beneficiary underwent a full tooth extraction because it was deemed as medically necessary preliminary to radiation therapy of cancer. All medical personnel are in agreement, including the OCHAMPUS medical reviewers, that this was medically necessary and appropriate care. The sole question for determination, therefore, is whether or not this procedure qualifies for CHAMPUS Basic Program benefits under the cited provisions of DoD 6010.8-R.

It has consistently been our interpretation that to be considered adjunctive for the purpose of CHAMPUS, any proposed

dental care must affect, treat, or control the primary medical condition.

Three previous FINAL DECISIONS issued by this office were considered by the Hearing Officer in the evaluation of this case. These decisions represent final agency administrative action in their respective appeals and are considered as definitive statements of Department of Defense policy on the specific issues decided therein. As final administrative decisions, these cases are afforded precedential value in other similar cases and are considered to be binding on CHAMPUS hearing officers.

Each of the previous decisions considered by this Hearing Officer involved the interpretation of the adjunctive dental care provisions of DoD 6010.8-R. These cases include: ASD(HA) Case File 2-29, which held that dental services following cancer treatment were not covered where the dental care improved mastication, and hence nutrition and general health, and, where there was a speculative link between the grinding of teeth and the beneficiary's history of cancer; ASD(HA) 82-08, which held that dental care for teeth which had deteriorated as the direct result of radiation therapy was not covered adjunctive dental care; and ASD(HA) 83-26, which held root canal therapy on teeth which had deteriorated as the result of the surgical removal of a cyst in the gum was not adjunctive dental care. All of these earlier decisions were based upon a finding, at least in part, that the dental care did not treat or affect the primary medical condition.

The Hearing Officer provided the following analysis on the primary issue presented in this case:

> "The tooth extraction was not necessary to treat the cancer, but rather was necessary to prevent radio-osteonecrosis. The Secretary's office has previously found (precedential decision, 82-08) that dental services are not adjunctive if the medical condition is not affected by the proposed dental care. The mere fact that the dental services were provided before the radiation therapy rather than after the therapy does not alter the adjunctive issue. If the dental services are not 'adjunctive' when performed after the radiation therapy, they would not be 'adjunctive' if performed before the service. The dental services rendered after the radiation therapy corrected complications caused by the radiation therapy. The dental services performed before the radiation therapy were to prevent the damage from occurring . . . . [T]he peer reviewer found the removal of the teeth medically necessary . . . and a part of the treatment for oral cancer because her teeth and gums

> were in poor health as she would suffer deleterious effects from the radiation therapy if they were not removed. However, while it was medically necessary to prevent 'deleterouious [sic] effects', it was not medically necessary to treat the cancer.
>
> "The Hearing Officer finds that there was a preventative dental purpose in the tooth extraction rather than treatment of the cancer. While it is true that the preventative dental work was occasioned by the treatment for the cancer which was covered by CHAMPUS, that does not make the dental service adjunctive within the meaning of Regulation DoD 6010.8-R, chapter IV, E.10., and as further clarified by the precedential decisions, 2-79, 82-08 and 83-26."

After considering the entire record in conjunction with the regulation requirements, I find the Hearing Officer's analysis to be essentially correct. Based upon the regulatory provisions and precedential decisions available to the Hearing Officer, the extraction of this beneficiary's teeth did not qualify as adjunctive dental care under CHAMPUS. However, after carefully considering the issues presented in this case, I have determined that the previous interpretations of the regulatory implementation of the adjunctive dental care provisions have unduly narrowed the intended benefit. I believe that the provisions of CHAMPUS should operate to include CHAMPUS cost-sharing of medically necessary adjunctive dental care which is required solely as the result of trauma or other harm to the teeth or their supporting structures occasioned by the appropriate medical management of an injury or a disease or illness. Accordingly, I have determined to allow cost-sharing of the removal of the beneficiary's teeth.

I recognize that this represents a substantial departure from the interpretations given to the regulatory implementation of the adjunctive dental care provisions of CHAMPUS in the past and may require some revision or redefinition of the adjunctive dental care provisions of DoD 6010.8-R. For example, I am aware of the provisions of the final clause of chapter IV, paragraph E.10.b.(3) which excludes dental restorations of teeth "injured, affected, or fractured during the medical or surgical management of a medical condition." That provision is not consistent with the interpretation I am making herein, and must be changed. Consequently, the Director, OCHAMPUS (or a designee), shall take appropriate steps to review and amend the regulatory provisions relating to adjunctive dental care under CHAMPUS to ensure that those provisions allow the cost-sharing of adjunctive dental care where it is required solely as the result of iatrogenic dental trauma or other harm caused by the medically necessary treatment of an injury or a disease or illness.

In addition to the foregoing, I do not find the regulatory exclusion of "dental care which is essentially preventative and (even if performed to prevent a potential medical condition) which is not an integral part of the treatment of a medical (not dental) condition" to be appropriately applicable to this case. While it can certainly be argued that the extraction of the beneficiary's teeth was intended to prevent radio-osteonecrosis of the mandible, I do not find it to be preventative in the sense intended for exclusion under CHAMPUS. Such excluded preventative care usually consists of relatively benign measures which have a neutral or beneficial effect on general health. Here we have a serious traumatic deterioration in personal well-being which can be considered beneficial only in the sense that it is intended to preclude the likely occurrence of a much more serious condition. It is a planned injury undertaken solely for the purpose of mitigating the consequences of the damage caused by a massive dosage of radiation. In this sense, I find it to be more an integral part of the treatment of the medical condition than an excluded preventative measure.

Oral Surgery

The second primary issue identified above relates to the question of CHAMPUS cost-sharing of the beneficiary's teeth extraction as covered oral surgery. That provision, however, requires that the oral surgery be essentially medical rather than dental. There is little question that the removal of the beneficiary's teeth was essentially a dental procedure. However, because of my finding above that the procedure qualifies as covered adjunctive dental care, I find this second issue to have been rendered moot and to not require extensive discussion herein.

The evidence of record indicates that one alternative treatment for the beneficiary's squamous cell carcinoma was surgery. This was ruled out, however, primarily because it would be disfiguring. Had such a surgical procedure been undertaken, it would have qualified as a benefit of CHAMPUS.

SECONDARY ISSUE

Payment of Other Similar Claims

In her prehearing statement to the Hearing Officer, the beneficiary argued that other CHAMPUS beneficiaries had CHAMPUS claims for similar services paid. In support of this argument she submitted copies of a CHAMPUS claim, Explanation of Benefits, and an Operative Report pertaining to another CHAMPUS beneficiary with a diagnosis of cancer of the mouth who underwent a tooth extraction performed by the same oral surgeon who treated the appealing party. The submitted claim form indicates that the beneficiary in that case underwent a "total mouth alveoloplasty for radiation therapy" and the "surgical removal of five teeth." The Operative Report indicates that in addition to the teeth extraction and alveoloplasty, a lesion on the ventral surface of

the left tongue was excised at the same time. Obviously, it is inappropriate to attempt to adjudicate such extraneous claims within the context of a subsequent and different appeal case. Even if all or a significant portion of the procedures performed in such extraneous claims was for noncovered, nonadjunctive care, their possible erroneous adjudication is not relevant to the decision in a subsequent appeal. CHAMPUS Fiscal Intermediaries do occasionally make mistakes in the claims adjudicatory process. Any CHAMPUS claim which has not had the benefit of a full administrative appeal and the issuance of a Final Agency Decision cannot establish or be used as a precedent for the adjudication of other claims. Thus, whether the extraneous claim was processed correctly or incorrectly has no bearing on the adjudication of an appealing party's claim or appeal.

SUMMARY

In summary, it is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) that the removal of the beneficiary's teeth preliminary to the treatment of squamous cell carcinoma of the mouth by radiation therapy did constitute covered adjunctive dental care under CHAMPUS. The CHAMPUS claim for the services of the oral surgeon in a billed amount of $975.00 is, therefore, allowed. The Director, OCHAMPUS, shall also review the regulatory implementation of the statutory provisions relating to adjunctive dental care and submit amendments to make them fully compatible with this FINAL DECISION. With respect to the CHAMPUS claim in question, issuance of this FINAL DECISION completes the administrative appeal process as provided under DoD 6010.8-R, chapter X, and no further administrative appeal is available.

William Mayer, M.D.

William Mayer, M.D.

RECOMMENDED DECISION
Claim for CHAMPUS Benefits
Civilian Health and Medical Program for the
Uniformed Services
(CHAMPUS)

[redacted]
Beneficiary

[redacted] Retired, [redacted]
Sponsor Sponsor's SSN

This case is before the undersigned Hearing Officer pursuant to the Appealing Party's request for Hearing of the First Level determination. The Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) has granted the Appealing Party's request for a Hearing. This Hearing was held in West Palm Beach, Florida, on December 28, 1983, pursuant to the Regulation of DOD 6010.8-R, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Chapter X, "Appeals and Hearing Procedures".

ISSUES

The issues before the Hearing Officer are (1) whether the removal of 26 teeth in preparing the patient's mouth for treatment of cancer through radiation therapy may be cost-shared as adjunctive dental care, absent preauthorization? and (2) whether the removal of 26 teeth in preparing the patient's mouth for treatment of cancer through radiation therapy may be cost-shared as covered oral surgery?

REGULATIONS

CHAMPUS benefits are authorized by Congressional legislation incorporated in Chapter 55 of Title 10, United States Code, and implemented by the Secretary of Defense and the Secretary of Health and Human Services in the Department of Defense Regulation 6010.8-R. Specific regulation provisions pertinent to this case are set forth below.

Chapter IV, subsection A.1., states in part that the CHAMPUS Basic Program will pay for "medically necessary" services and supplies required in the diagnosis and treatment of illness or injury.

Chapter II, subsection B.104., defines "medically necessary," in part, as services and supplies (that is, frequency, extent and kinds) adequate for the diagnosis and treatment of illness or injury and states that "medically necessary" includes the concept of "appropriate medical care."

Chapter IV, subsection G.1., specifically excludes services and supplies which are not medically necessary for the diagnosis and/or treatment of a covered illness or injury.

Chapter IV, subsection E.10., states that under very limited circumstances benefits are available for dental services and supplies when the dental services are adjunctive to otherwise covered medical treatment.

Chapter IV, subparagraph E.10.A., states that adjunctive dental care is limited to that dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, which is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition.

Chapter IV, subparagraph E.10.b.(2)., lists general exclusions and states that adjunctive dental care does not include dental services which involve only the teeth and/or their supporting structure.

Chapter IV.E.10.c., states that adjunctive dental care, in order to be covered requires prior approval and written preauthorization from the Director, OCHAMPUS (or a designee).

Chapter IV.E.10.c.(5)., provides, where adjunctive dental care involves an emergency medical (not dental) situation (such as facial injuries resulting from an accident), preauthorization is waived.

Chapter IV.G.10., specifically excludes from the CHAMPUS Basic Program, services and supplies provided in circumstances which require preauthorization in order for CHAMPUS benefits to be extended, for which preauthorization was not obtained.

Chapter IV.E.10.d., states as follows:

> Notwithstanding the above limitations on dental care, there are certain oral surgical procedures which are performed by both physicians and dentists, and which are essentially medical rather than dental care. For the purposes of CHAMPUS, the following procedures, whether performed by a physician or dentist, are considered to be in this category and benefits may be extended for otherwise covered services and supplies without preauthorization:
>
> (1) Excision of tumors and cysts of the jaws, cheeks, lips, tongue, roof and floor of the mouth, when such conditions require a pathological (histological) examination.
>
> (2) Surgical procedures required to correct accidental injuries of the jaws, cheeks, lips, tongue, roof and floor of the mouth.

(3) Treatment of oral and/or facial cancer.

(4) Treatment of fractures of facial bones.

(5) External (extra-oral) incision and drainage of cellulitis.

(6) Surgery of accessory sinuses, salivary glands or ducts.

(7) Reduction of dislocations and the excision of the termporomandibular joints, when surgery is a necessary part of the reduction.

(8) Any oral surgical procedure which falls within the cosmetic, reconstructive and/or plastic surgery definition is subject to the limitations and requirements set forth in Subsection E.8. of Chapter IV of this Regulation, "Basic Program Benefits".

Note: Preparation of the mouth for dentures is not a covered oral surgery procedure. Also excluded are the removal of unerupted or partially erupted, malposed and or impacted teeth, with or without the attached follicular or development tissues.

EVIDENCE CONSIDERED

The Hearing Office has considered all of the testimony at the Hearing, the arguments made, and the documents described in the list attached to this Recommended Decision as Exhibits 1 through 27.

SUMMARY OF THE EVIDENCE

The Beneficiary [redacted] was admitted to Martin Memorial Hospital on December 16, 1982 with a diagnosis of Periodontoclasia and Carcinoma of the mouth (Exhibit 3 and 4). The beneficiary testified at the hearing that her physician required that she have her teeth removed before radiation therapy could begin in treatment of the cancer. He stated that the risk of complications from radiation therapy while her teeth were in place, was considerable and he would not accept her as a patient for radiation therapy unless the teeth were remove. The alternative treatment for the cancer was surgery and was ruled out as too disfiguring. The requirement for the removal of the teeth before commencing radiation therapy was occasioned by the beneficiary's prior dental health. The beneficiary had a history of pyorrhea (Exhibit 21, page 8) and six months previously had had a tooth extracted due to infection. Dr. James W. McConnell stated that it was necessary to extract the beneficiary's teeth to prevent osteoradio-necrosis (Exhibit 21, page 5). Dr. Harry Kent, Radiotherapist, wrote

OCHAMPUS on September 14, 1983 stating:

> "As you will note under the physical examination in the second paragraph of the Eye, Ears, Nose, Throat portion, the patient's teeth were generally in poor repair. In addition, the patient had a history of pyorrhea. The patient's risk of developing radio-osteonecrosis of the mandible was extremely high had we proceeded with radiation therapy and not had her undergo full tooth extraction.
>
> In my opinion, radio-osteonecrosis of the mandible is one of the most debilating side effects of radiation therapy. The pain from this is almost totally unbearable. The stench from the open infection is so bad that the patient's themselves have serious psychological problems from it. In addition, the patient's visitors probably do not remain in the room longer than two to three minutes at the time because of the odor." (Exhibit 21, page 6)

At the hearing, the beneficiary stated that while she had a prior history of pyorrhea, that she took excellent care of her teeth and had had no dental procedures performed in the three years preceding the surgery except for the extraction of one tooth. She further stated that there had been no discussion between she and her dentist concerning the removal of her teeth or any other dental procedure prior to the discovery of the cancer. She stated that her teeth were in basically good health and she expected to have them for many years to come. Upon the discovery of the cancer, the removal of the teeth was solely to prevent medical complications from the radiation therapy for the cancer. There was no dental purpose in the extraction of the teeth. She stated that she was otherwise in good medical health and was not receiving medication or being followed for any medical condition other than the cancer of the mouth. On December 17, 1982, the beneficiary underwent surgical removal of 26 teeth and eight days later began her radiation therapy. Between January 2, 1983 and February 25, 1983, the beneficiary received the maximum radiation therapy that she could undergo. The therapy was successful and in September, 1983, she was fitted with dentures. She stated she is in goodgeneral health and is not being treated for any medical condition.

CHAMPUS paid all bills related to the cost of the removal of the teeth except the charge by Dr. Sorrell I. Strauss in the amount of Nine Hundred Seventy Five Dollars ($975.00). The charge was denied by the fiscal intermediary as no preauthorization was acquired (Exhibit 8). The beneficiary appealed that decision. In a reconsideration decision dated April 25, 1983, the fiscal intermediary upheld the initial determination in an informal review stating that CHAMPUS could not cost-share as preauthorization was not obtained (Exhibit 14, page 3).

The beneficiary again appealed to OCHAMPUS. OCHAMPUS determined that it could not cost-share as the surgery was neither adjunctive dental care or a covered oral surgery (Exhibit 16). The beneficiary then

requested a hearing which was conducted in West Palm Beach, Florida on December 28, 1983. Both the beneficiary and her sponsor/husband were present at the hearing.

EVALUATION OF THE EVIDENCE

The medical testimony in this case from Dr. James W. McConnell (Exhibit 21, page 5), Dr. C. Harry Kent (Exhibit 21, page 7), and Dr. Sorrell I. Strauss as well as the peer review from the Colorado Foundation for Medical Care are essentially in agreement as to the medical necessity of the surgical removal of the teeth. All conclude that it was medically necessary to remove the teeth in order to begin the radiation therapy under the optimum treatment regiment for the beneficiary and at the least risk of harm to her. The beneficiary's oral testimony and that of her husband's essentially confirmed the medical record in this case and there is not a problem of conflict of testimony or fact. This case merely involves the interpretation of DOD 6010.8-R, Chapter IV.E.10. cited previously. The Office for the Secretary of Defense for Health Affairs has issued three precedential decisions (2-79, 82-08, 83-26). These cases hold that merely because a dental procedure was required as a result of complications arising out of treatment of a medical condition, that they were not adjunctive dental care or covered oral surgery within the meaning of the Regulation. The cases require that the medical condition be affected by the dental care to be considered adjunctive. The mere fact that the treatment of the medical condition gives rise to complications which require dental care does not make that care covered under the CHAMPUS Basic Program.

The Hearing Officer finds that CHAMPUS may not cost-share in those services rendered to the beneficiary at the Martin Memorial Hospital on December 16 and 17, 1982 including the surgical removal of 26 teeth.

RATIONALE

The issue of preauthorization upon which the inital denial was based is a moot point and does not require a finding. The OCHAMPUS Attorney/Advisor states that preauthorization is waived by OCHAMPUS and that the denial is based on surgery not constituting adjunctive dental care or otherwise covered oral surgery.

The CHAMPUS Regulation concerning adjunctive dental care cited previously (DOD 6010.8-4, Chapter IV.E.10) has been interpretated by the Secretary of Defense for Health Affairs in several precedential decisions which are binding on the Hearing Officer. In the precedential decision dated 2-79, the Secretary found that dental services following cancer treatment was not covered as

adjunctive dental care where the claim was made that the dental care improved mastication, and hence nutrition, prevented teeth deterioration and where there was a speculative link between the grinding of teeth and the beneficiary's history of cancer. The argument was further made that the treatment was necessary to preclude the need for dentures at some future date. In that case there appeared to be no direct link between the dental services and the treatment of cancer. In the next precedential decision concerning adjunctive dental care numbered 82-08, the facts are a little closer to this case. In that case, the beneficiary's teeth deteriorated as a result of treatment for cancer of the larynx. The radiation affected the salivary glands to the extent the glands did not produce the washing and protective effect on the teeth. The result was extensive damage to the teeth and gums. There was additional evidence that the cobalt treatment directly damaged the teeth. The treatment for the cancer had concluded and had damaged the teeth subsequently required root canal therapy for which benefits were denied. In that decision, the Secretary stated "if a medical condition is not affected by proposed dental care, it cannot be considered adjunctive for purposes of CHAMPUS cost-sharing". In that case, the cancer treatment had been concluded and the subsequent dental care could not affect the primary medical condition.

In a third precedential decision dated 83-26, the beneficiary underwent surgical removal of a cyst in the gum which exposed the roots of two teeth. Subsequently, the beneficiary underwent root canal thearpy on those teeth and CHAMPUS denied cost-sharing as the root canal therapy was not adjunctive dental care. Again, the treatment for the primary medical condition had ceased before the dental services were provided, hence the medical condition could not be affected by the dental care.

However, in this case, the dental care was a necessary prerequisite to the treatment of choice for the cancer. The beneficiary testified that the radiologist would not accept her as a patient until her teeth were removed. In a letter to OCHAMPUS dated September 14, 1983, Dr. McConnell states "prior to her radiation therapy, it was necessary to extract her teeth to prevent osteoradio-necrosis" (Exhibit 21, page 5). Dr. Harry Kent, a radiologist, stated in a letter to OCHAMPUS dated September 14, 1983, "the patient's risk of developing radio-ostenecrosis of the mandible was extremely high had we preceded with radiation therapy and not had her undergo full tooth extraction" (Exhibit 21, page 6). The tooth extraction was not necessary to treat the cancer, but rather was necessary to <u>prevent</u> osteoradio-necrosis. The Secretary's office has previously found (precedential decision, 82-08) that dental services are not adjunctive if the medical condition is not affected by the proposed dental care. The mere fact that the dental services were provided before the radiation therapy rather than after the therapy does not alter the adjunctive issue. If the dental services are not "adjunctive" when performed after the radiation therapy, they would not be "adjunctive" if performed before the service. The dental services

rendered after the radiation therapy corrected complications caused by the radiation therapy. The dental services performed before the radiation therapy were to prevent the damage from occurring. While the peer reviewer found the removal of the teeth medically necessary (Exhibit 24, page 1, No. 4)and a part of the treatment for oral cancer because her teeth and gums were in poor health as she would suffer deleterouious effects from the radiation therapy if they were not removed. However, while it was medically necessary to prevent "deleterouious effects", it was not medically necessary to treat the cancer.

The Hearing Officer finds that there was a preventive dental purpose in the tooth extraction rather than treatment of the cancer. While it is true that the preventive dental work was occasioned by the treatment for the cancer which was covered by CHAMPUS, that does not make the dental service adjunctive within the meaning of Regulation DOD 6010.8-R, Chapter IV, E.10., and as further clarified by the precedential decisions, 2-79, 82-08 and 83-26.

The second issue in this case is whether the removal of the 26 teeth may be cost-shared as covered oral surgery. Regulation DOD 6010.8-R, Chapter IV, E.10.d. provides coverage for certain oral surgical procedures such as (3) treatment of oral and/or facial cancer. The record is quite clear in this case from the documents and testimony that the medical treatment for the cancer was radiation. The removal of the teeth was a preventive measure necessary by a history of poor dental health to prevent complications from arising out of the radiation therapy. Hence, the removal of the teeth is not oral surgery covered by the CHAMPUS Basic Program.

FINDINGS

The undersigned Hearing Officer makes the following specific findings of the fact:

1. The beneficiary was treated for oral cancer from January 2, 1983 through February 25, 1983.

2. Prior to beginning radiation therapy, it was medically necessary to remove the beneficiary's teeth to prevent complications arising out of the treatment of choice - radiation therapy.

3. The removal of the beneficiary's teeth was a dental procedure to prevent osteoradio-necrosis from developing in the jaw as a result of the radiation therapy.

4. The removal of the beneficiary's teeth was neither adjunctive dental care nor covered oral surgery within the meaning of the CHAMPUS Basic Program.

RECOMMENDED DECISION

The undersigned Hearing Officer's recommended decision is that CHAMPUS not cost-share in those expenses arising out of the removal of the beneficiary's teeth on December 17, 1982. That recommended decision includes the claim for services by Dr. Sorrell I. Strauss in the amount of Nine Hundred Seventy Five Dollars ($975.00) as well as other claims associated with the removal of the teeth. The removal of the teeth was not adjunctive dental care or covered oral surgery within the meaning of DOD 6010.8-R, Chapter IV, E.10.

Done this the 5th day of January, 1984.

Don F. Wiginton