ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

10 OCT 1979

HEALTH AFFAIRS

FINAL DECISION: Appeal
(OASD(HA) Case File 04-79)

The Hearing File of Record, tapes of the oral testimony presented at the Hearing, and the Hearing Officer's RECOMMENDED DECISION (along with the Memorandum of Concurrece from the Director, OCHAMPUS) on OASD(HA) Appeal Case No. 04-79 have been reviewed. The amount in dispute in this case is $4150.00. It was the Hearing Officer's recommendation that the CHAMPUS Dental Contractor's initial determination to deny the appealing party's 14 January 1975 Request for Preauthorization of dental services (a full mouth reconstruction) be upheld. It was his finding that the dental services in dispute did not constitute adjunctive dental care as set forth in applicable Army Regulation AR 40-12 (AFR 168-9). 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 CHAMPUS benefits were denied constituted "adjunctive dental care." By law CHAMPUS benefits for dental care are very limited. CHAPTER 55, Title 10, United States Code, Section 1079 (a)(1) states, "... with respect to dental care, only that care required as necessary adjunct to medical or surgical treatment may be provided." [emphasis added].

The implementing regulation (applicable at the time the disputed dental care was rendered) specified covered dental care to be that dental care required as a necessary adjunct in the treatment and management of a medical or surgical condition other than dental. [emphasis added] (Reference: Army Regulation 40-121 (AFR 168-9), CHAPTER 1, Section 5-2 (j).) The applicable regulation further stated, "The primary [medical] diagnosis must he specific so that the relationship between the primary condition and the

requirement for dental care in the treatment of the primary medical condition is clearly shown. Dental care to improve the general health of the patient is not necessarily adjunctive dental care. [emphasis added] (Reference: Army Regulation 40-121, Chapter; Section 1-2(e).)

The sponsor/representative, in support of the appealing party, raised many points in arguing that CHAMPUS benefits should be extended, most of which did not relate to the basic issue of whether the disputed dental care did, in fact, qualify as "adjunctive." 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. However, to be sure that the appealing party fully understands the underlying bases upon which the inital denial is being reaffirmed and upheld, each of the points presented is addressed in this FINAL DECISION.

- o Prior Medical History: Gastrointestinal Complaints. First it was claimed that the appealing party's prior medical history of ulcers and other varied gastrointestinal complaints required that the disputed dental work be performed. The medical documentation confirms the prior medical history. However, no where in those records is there any indication that dental work was required in the treatment of the gastrointestinal-related conditions. Further, there was no evidence presented which confirmed (1) a specific medical diagnosis, currently under treatment or (2) a relationship between any such medical condition and the need for the disputed dental care. These requirements must be met in order for dental care to be considered under the "adjunctive" provision (Army Regulation AR 40-121 (AFR 168-9), Chapter 1, Section 1-2 (e)). The fact that a prior medical history can be established is not unusual nor controlling and in no way automatically qualifies subsequent dental care as "adjunctive."

- o Improved Mastication. Second it was claimed that the disputed dental care was necessary to improve mastication and thus contributed to alleviating the appealing party's various gastrointestinal complaints. It is not argued that the full mouth reconstruction may not have improved the appealing party's masticatory process to some extent;

however, this must be considered only as improving nuitrition and/or general good health, not as a specific treatment. Again, there must be a primary medical condition and the dental care must be necessary to treat and manage that medical condition. Dental care intended to improve general health and/or nutrition is an insufficient basis on which to qualify as "adjunctive." The applicable regulation states, "Dental Care to improve the general health of the patient is not necessarily adjunctive care." [emphasis added] (Reference: Army Regulation AR 40-121 (AFR 168-9), Chapter 1, Section 1-2(e).)

- Dental Condition Only. Despite the claims to the contrary by the appealing party and her sponsor/representative, the only condition present was a dental condition affecting the teeth, i.e. three missing teeth and worn fillings and crowns. There was not even any documentation of oral disease or infection. Such a "dental only" condition does not qualify for consideration under the "adjunctive" provisions regardless of any other circumstances which may be present. (Reference: Army Regulation AR 40-121 (AFR 168-9), Chapter 1, Section 5-2 (j).)

- Cosmetic Purpose. Although the issue was not addressed in the Hearing Officer's RECOMMENDED DESISION, in the oral testimony it was also claimed by the appealing party and her representative/sponsor that the purpose of the disputed dental care was not cosmetic. However, the choice of the full mouth reconstruction using gold and porcelain fused-to-gold crowns (as opposed to dentures or restoration by means of amalgam or other accepted dental material) raises a serious question as to whether a primary consideration was not appearance--i.e., cosmetic. (There was also the implication by the attending dentist that dentures would not be psychologically acceptable to the appealing party.) While it is not denied that dental care may have been indicated, the functional purpose could have been obtained by other less costly means. This is reinforced by the attending dentist who stated the long term prognosis

of the full mouth reconstruction to be "still questionable." Consideration of all the evidence presented can only lead to the conclusion that a primary consideration in making the decision on the type of dental care to pursue was in large part, cosmetic. Cosmetic dentistry, for whatever reason performed, is excluded. Even had a primary medical condition and an "adjunctive" relationship been established, the initial denial would have been upheld because of the cosmetic nature of the disputed dental work. Cosmetic dentistry, regardless of the reason performed does not qualify as "necessary adjunct to medical or surgical treatment..." [emphasis added] (Reference: Chapter 55, Title 10, United States Code, Section 1079(a)(1)).

There was no evidence presented in the Hearing File of Record or the oral testimony which supported the appealing party's claim that the full month reconstruction met the definition of "adjunctive" dental care. (Reference: Army Regulation AR 40-121 (AFR 168-9), CHAPTER 1, Section 1-2(e).)

SECONDARY ISSUES

The sponsor/representative raised many secondary issues which he asserted supported special consideration to extend benefits in this case.

1. Request for Preauthorization: Untimely Response. It was claimed that lack of a timely response to the Request for Preauthorization (i.e., a wait of approximately 90 days) caused the appealing party and her sponsor to commence the dental work without waiting for a written response. This is a moot contention since the documentation in the Hearing File of Record indicates the disputed dental care was commenced a full week prior to submission of the written Request for Preauthorization. However, even without this finding, it would not have influenced the FINAL DECISION.

   - o Preauthorization was not required (only suggested) in January 1975. So any Request for Preauthorization was voluntary.

   - o The dental care "requested" was highly elective--and not emergent--the condition being corrected had been present for a considerable period of time. The appealing party was not in pain or discomfort until after the reconstruction process was started. There

was no compelling reason other than a personal one to commence the dental work prior to a response from the CHAMPUS Dental Contractor.

- While under usual circumstances 90 days is a long period of time to respond to a Preauthorizaiton Request, during the particular time period in question the Dental Contractor was in process of gearing up for required pre-authorization and some backlog had developed. However, notwithstanding these circumstance, it was also not a routine request. In conducting a review of such complex (and expensive) dental care as is involved in this case, 90 days is not necessarily an overly long period of time. Also, since it was not an emergent or critical situation, other cases may well have taken priority.

- Further, the Request for Preauthorization listed the disputed dental care as dental work "to be done." In his inquiries regarding the status of the Request for Preauthorization, the sponsor/representative never made any mention of the fact that the dental care had commenced and/or was actually completed. The CHAMPUS Dental Contractor was conducting its review under the assumption that the dental care in question was still "to be done."

- The alledged lost opportunity to consider alternatives must be considered a specious argument since the decision had been made to proceed with the disputed dental care even before the Preauthorization Request was submitted. However, even had this not been the case, the choice of alternatives was not affected. The first alternative cited by the sponsor/representative, i.e., full mouth dentures (in lieu of the full mouth reconstruction) is in conflict with the appealing party's position that the dental care did not have a cosmetic purpose and that dentures were inappropriate because of tongue thrust problems. As a matter of fact, the documentation indicates that the appealing party did consider dentures prior to the submission of the Request for Preauthorization. It was the personal decision of the appealing party to pursue the full mouth reconstruction. The second alternative cited by the sponsor/representative, i.e., that of purchasing

a private, individual dental policy simply is not a valid position. He claimed he would have paid a few hundred dollars in premiums, then discontinue the policy when the reconstructive dental work was completed thus saving himself several thousands of dollars. This was not a realistic alternative and indicates either a gross lack of understanding of the underlying principles of insurance or even what kind of dental insurance is available; or it is a deliberate attempt to confuse the real issue. It would be very unusual for any dental coverage to be available for the kind of dental care that is in dispute in this case, even under a comprehensive group dental plan.

2. Financial Hardship. The sponsor/representative requested an "administrative" decision based on financial hardship--i.e., essentially that he had gone ahead and paid for his wife's dental care expecting CHAMPUS to cost share; and now that CHAMPUS has denied liability, he has been adversely affected financially. Financial hardship per se is not a valid basis on which to consider an appeal. There is nothing in the law or applicable regulation which speaks to financial hardship. Decisions on CHAMPUS appeal cases must be made on the issues(s). (And even if financial hardship were a legal consideration in an appeal case, the elements in this particular case would have precluded its consideration. Despite efforts to have it believed that preauthorization was an issue, the decision to seek the dental care in question was a personal one on the part of the appealing party and care commenced even before the written Request for Preauthorization was submitted.)

3. Program Policy Changes. On several occasions the sponsor/representative claimed that Program policy changes relative to dental benefits were in process at the time the Preauthorization Request was submitted and that this resulted in denial of the dental care in question. He further asserted that had the request been acted on earlier, the request would have resulted in approval. This allegation is untrue. While certain practices related to dental care were under policy review about the time request was submitted, it had no bearing on the decision to deny benefits in this case. As indicated under the PRIMARY ISSUE section of this FINAL DECISION, the disputed dental care simply did not qualify as "adjunctive" dental care as defined in applicable Regulation AR 40-121 (ARF 168-9).

4. Local Military Medical/Dental Decisions: Impact on CHAMPUS. The sponsor/representative challenged CHAMPUS authority to "overrule" local Military medical/dental decisions. Military physicians and dentists are free to treat, recommend, and refer patients in keeping with applicable Service regulations. However, this does not commit CHAMPUS to extending benefits for such services received in the civilian sector. Regardless of the merits of any such referred or recommended medical or dental service, consideration for CHAMPUS benefits is a separate decision. Only CHAMPUS and its Fiscal Intermediaries, acting as the Program's agents, have authority to make benefit decisions which obligate Program funds. Such decisions may only be after a claim is filed or (as in this case) a Request for Preauthorization is received. The fact that a Military physician or dentist recommends, refers or supports the obtaining of certain medical or dental care from the civilian sector, is not controlling or binding on the Program anymore than medical or dental care ordered or directed by a civilian physician or dentist. What is controlling and binding are the law and applicable regulations.

5. CHAMPUS Advisor Misinformation. The sponsor/representative also claimed a CHAMPUS Health Benefits Advisor assured him that the dental care in question would be covered under CHAMPUS and that the Request for Preauthorization was "pro forma" only. Since there is no documentation in the Hearing File of Record to support this statement, we have no way to verify this. However, the matter is moot. While a CHAMPUS Advisor is expected to provide assistance and information to sponsors and beneficiaries, any statements as to whether specific medical or dental care is covered under CHAMPUS represents a personal opinion only. CHAMPUS Advisors are employees of the respective Services not OCHAMPUS, and have no authority to make Program benefit decisions. While it is truly unfortunate when an advisor is guilty of providing misleading or incorrect information, such errors are not binding on the Program.

6. Service Liaison Officers. The sponsor/representative further claimed that a current and former Service Liaison Officer assigned to OCHAMPUS had encouraged continued

pursuit of the appeal, providing at least "tacit" agreement that the disputed dental care should be covered by CHAMPUS. The sponsor/representative further implied he would not have wasted his time in pursuit of an appeal had it not been for this encouragement. The evidence submitted does indicate considerable involvement in this case on the part of Service Liaison Officer(s)--involvement beyond that which is appropriate in an appeal situation. Again, however, Liaison Officers assigned to OCHAMPUS are not on the staff of that agency--rather they are on the staffs of the Offices of the respective Surgeon Generals. They are primarily responsible for training of CHAMPUS Advisors. And, as with the Advisors, they also have no authority to make benefit decisions or obligate Program funds. The Hearing File of Record further indicates that the sponsor/representative was also most aggressive in pushing this appeal and in the last analysis the appealing party had to make the decision to continue to pursue the appeal. The Liaison Officers could not make that decision regardless of their active participation in the case. Therefore, despite the level of their involvement, it does not impact on the FINAL DECISION.

7. Period of Time in Appeal. The sponsor/representative cites the long period of time this case has been in appeal. He fails, however, to explain that the dental care in question was performed more than two years prior to implementation of the CHAMPUS formal administrative appeal system. By April 1976 all available reviews under the then operative informal appeal process had been exhausted. This case was subsequentely accepted as a formal appeal as a transitional case and as a special courtesy to the appealing party. (The care in dispute was actually rendered prior to 1 January 1976--the general cutoff date for accepting cases into the formal appeals structure.) The facts indicate the appealing party and her sponsor received an exceptional amount of attention and the case received multiple high level reviews.

SUMMARY

This FINAL DECISION in no way implies that the appealing party may not have required some dental care nor that she did not have the right to make a personal choice and select the full mouth reconstruction using gold and porcelain-fused-to gold as opposed to dentures or other type of reconstruction. Further, the dental work performed may have improved her masticatory process and thus

contributed to her general good health. This FINAL DECISION only confirms that the dental services in dispute did not qualify as "adjunctive" dental care as permitted by law and applicable regulation and thus cannot qualify for benefit consideration under CHAMPUS.

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Our review indicates the appealing party has received full due process in her appeal. 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)