



## ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

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HEALTH AFFAIRS

FINAL DECISION

Appeal

OASD(HA) Case File 08-79

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. 08-79 have been reviewed. The amount in dispute is \$433.00. It was the Hearing Officer's recommendation that the CHAMPUS Contractor's initial determination to deny CHAMPUS benefits for the December 1976-July 1977 dental services (i.e., dental therapy and splint related to Temporomandibular Joint Syndrome) be upheld. It was his finding that the dental care in dispute did not constitute adjunctive dental care as stipulated in applicable Army Regulation AR 40-121. 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 IN DISPUTE

The primary issue in dispute in this case is whether dental care for which CHAMPUS benefits were denied constitutes adjunctive dental care. By law CHAMPUS benefits for dental care are 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) further 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 AR 40-121, Chapter 1, Section 5-2 (j).)

The appealing party raised several points in presenting his position that the disputed dental care did, in fact, qualify as adjunctive. Nonetheless it is the finding of the Principal Deputy Assistant Secretary of Defense (Health Affairs) that the Hearing officer's conclusion was a proper one based on the evidence presented and that his rationale and findings

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were substantially correct. However, 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 by the appealing party is addressed in this FINAL DECISION.

- o Diagnosis: Temporomandibular Joint Syndrome (TMJ). First it was claimed that the Temporomandibular Joint (TMJ) condition diagnosed by the attending dentist was a medical condition which therefore qualified the disputed dental care as adjunctive. TMJ is a disfunction of the temporomandibular joint primarily caused by dental malocclusion (usually acquired rather than congenital). Under CHAMPUS TMJ has been and continues to be considered a dental (not a medical) condition. This position is supported by the evidence in Hearing File of Record which indicates no physician involvement and treatment only by dental procedures. There was no X-ray evidence or other documentation which indicated the presence of a secondary medical condition such as arthritis, a fracture, etc.. As a "dental only" condition, a diagnosis of TMJ does not qualify the disputed dental care for consideration as "adjunctive." (Reference: Army Regulation AR 40-121, Chapter 1, Section 5-2(j).)
- o Presence of Pain: Resulting Incapacity. Second it was claimed the Temporomandibular Joint Syndrome (TMJ) caused considerable pain which resulted in physical incapacity--i.e., restricted chewing and speaking. The evidence submitted did not document the extent or duration of such pain. However, even if pain was present and regardless of the degree, because it resulted from a dental only condition, the disputed dental care could not be considered under the "adjunctive" dental provision. The presence of dental-related pain indicates a dental condition not a medical one. As stated previously, there must be a primary medical condition currently under medical treatment in order for dental services to be considered under the "adjunctive" provision. (Reference: Army Regulation AR 40-121, Chapter 1, Section 5.2(j).)

- Dramatic Improvement. Third it was claimed that since initiation of the dental therapy in January 1977 the appealing party had experienced "dramatic improvement" in his ability to speak, chew his food and in the range of motion of the mandible; and further that the pain had also subsided. It was the appealing party's position that this improvement indicated the dental care was both necessary and beneficial. We are not questioning the fact that the appealing party may well have experienced the described general improvement or that the dental care was not needed. The purpose of having dental care/therapy done is because it is expected to produce improvement and relief, thus contributing to general good health. However, the fact that beneficial results accrue from dental services does not qualify the disputed dental care as "adjunctive." Again, a primary medical condition currently under medical (not dental) treatment must be present. The applicable Regulation specifically states, "Dental care to improve the general health of the patient is not necessarily adjunctive dental care." [emphasis added] (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-2 (e)).
- Relationship to Previous Dental Care. Fourth it was claimed that the Temporomandibular Joint Syndrome (TMJ) was not due to a congenital malocclusion but rather to previous dental care (i.e., improperly fitted bridgework) provided by a U.S. Navy dentist while the appealing party was overseas. The attending dentist who rendered the dental care in dispute did not address causative factors, nor was there an indication that replacement of existing bridgework was suggested or performed. However, even if it could be documented that prior dental work was the cause of the TMJ, and whether or not the prior dental work was done by a NAVY or civilian dentist, it still would involve a "dental only" situation and thus not qualify as "adjunctive" under CHAMPUS. (Reference: Army Regulation AR 40-121, Chapter 1, Section 5.2(j)).
- Dental Condition Only. Despite the claims to the contrary by the appealing party, the only condition present was the Temporomandibular Joint (TMJ) condition, i.e., causing associated dental-related pain which resulted in chewing and speaking difficulties. TMJ is a dental condition not a medical one. This

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position is supported by the fact that the condition was diagnosed and treated by a dentist without physician (medical) intervention.

There was no evidence presented in the Hearing File of Record or the oral testimony which supported the appealing party's claim that that the disputed dental therapy and splint met the definition of "adjunctive" dental care. (Reference: Army Regulation AR 40-121, Chapter 1, Section 1-2(e)).

#### SECONDARY ISSUES

Several secondary issues were surfaced by the appealing party or through OASD(HA) review of the case.

1. Retirees: Enactment of CHAMPUS Limited Access to Uniformed Service. It was asserted by the appealing party that it was "common knowledge" that access to Uniformed Service facilities is now unavailable to retirees. He claimed this was a direct result of passage of the 1966 Amendments to Chapter 55, United States Code, Title 10--which eventually became known as CHAMPUS. This is an erroneous premise. While it is generally true that availability of direct care to retirees, both medical and dental, is more limited today than it was [say) ten years ago, this situation is not due to enactment of CHAMPUS. It is primarily due to (a) a temporary short fall of Military physicians and dentists resulting from termination of the draft, (b) funding limitations for new construction and modernization of existing Uniformed Service medical and dental facilities, and (c) an increasing beneficiary population. The Hearing File of Record is silent as to whether or not the appealing party sought access to a direct care facility prior to having the disputed dental care provided by a civilian source of care. However, whether or not the services were available from a direct care facility has no bearing on whether CHAMPUS benefits may be extended. The CHAMPUS decision is a separate one and must be made in compliance with the restrictive language in the statute -- i.e., which limits CHAMPUS benefits to "adjunctive" dental care. (This statutory restriction on "adjunctive" dental care does not apply to dental care received in a direct care facility. For
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Retirees the determination of whether or not there will be direct care access is based on the "space available" concept--a completely separate provision of the law.)

2. Retirees: Right to Free Dental Care. Next the appealing party claimed he had an "implied contract" with the NAVY which promised him free dental care for life. This is in error. The appealing party was certainly guaranteed free dental care while on active duty; however, the law has never guaranteed free dental or medical care for retirees. It is true that after active duty members, retirees have first priority to receive dental services from a Uniformed Services dental facility (assuming the facility is not designated as "remote" or outside the United States) and may receive the full range available of dental care. By law, however, this is subject to space being available and the law does not guarantee such availability. Enactment of CHAMPUS did not affect the rules regarding the availability of dental care within the direct care system. As a matter of fact, prior to the passage of CHAMPUS, even if civilian dental care qualified as "adjunctive," there was no financial assistance available. So although CHAMPUS benefits for dental services are very limited, those dental services for which benefits are payable represent a gain to retirees--not a loss.
3. No Request for Preauthorization. The Hearing File of Record includes no evidence that a Request for Preauthorization of the disputed dental services was ever submitted or that any effort was made to seek prior approval. Rather, a claim dated 10 February 1977, was submitted (after the disputed dental therapy was completed in January 1977). Since the initial denial and all levels of appeal including this FINAL DECISION, were based in the substantive issue of whether the dental care qualified as "adjunctive," this violation of Program procedural requirements had no impact on the ultimate decision in this case. However, it is pointed out that if proper procedure had been followed, the appealing party would have been advised prior to having the dental work done, that CHAMPUS benefits could not be extended. While it is unlikely that such a denial would have kept the appealing party from proceeding it would have alerted him to the fact that the dental care would require personal financing. That is the primary purpose of preauthorization--to advise beneficiaries before they

commence the care, permitting an informed decision as to whether or how to proceed. Further, had the appeal review indicated that the dental care qualified as "adjunctive" but was not an emergency, lack of such prior approval would have meant benefits could not be extended unless it could be shown there was a good and valid reason why preapproval was not obtained (which the Hearing File of Record does not support in this case).

4. Beneficiary Responsibility: Knowledge of CHAMPUS Coverage. During his oral testimony the appealing party asserted beneficiaries could not be expected to understand the details of CHAMPUS. During this discussion it was implied beneficiaries assumed that any civilian medical or dental care obtained was covered and therefore should be payable. While it is recognized that a beneficiary may not be fully familiar with all aspects of CHAMPUS, a beneficiary is expected to keep informed-particularly about those specific aspects of the Program affecting him/her. DoD, OCHAMPUS and the Uniformed Services go to considerable effort to provide information and assistance to beneficiaries. A comprehensive regulation has been published and may be reviewed in the CHAMPUS Advisor's Office at every Uniformed Service medical facility. There are a significant number of special benefit information materials available. CHAMPUS Advisors also provide personal assistance and counselling. In addition, beneficiaries may seek information from CHAMPUS Fiscal Intermediaries as well as OCHAMPUS, the managing agency for the Program. For a beneficiary to take the position he cannot be expected to understand CHAMPUS and therefor has no responsibility, is not an acceptable or reasonable position. Beneficiary ignorance of Program provisions and requirements cannot be considered in arriving at benefit decisions. What is controlling is the applicable law and regulations.
5. Dentist: An Authorized Provider. The appealing party also claimed that because a dentist is an authorized provider under CHAMPUS, that benefits should be payable for any services provided. That a provider is authorized under CHAMPUS does not, in itself, guarantee Program benefits can be extended. In any such determination three criteria must be met. First, the individual receiving the care must be an eligible beneficiary.

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Second, the individual/institution providing the care must be an authorized provider under the Program. And third, the service/supply in question must be covered. In every case all three criteria must be met in order for CHAMPUS benefits to be extended. In this appeal, the first two criteria were met (i.e., an eligible beneficiary and an authorized provider). However, the disputed dental care did not meet the "covered" service criteria because it did not qualify as "adjunctive." At no time was there a question as to whether or not the dentist in this case was an authorized provider.

#### SUMMARY

This FINAL DECISION in no way implies that the appealing party did not require the dental care that was performed, nor does it intend to imply that the dental care was inappropriate. 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.

Our review indicates the appealing party has received full due process in his 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)