ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

HEALTH AFFAIRS

20 JUN 1980

FINAL DECISION Appeal

USAF, Appealing Party
OASD(HA) Case No. 18-79

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. 18-79 have been reviewed. The amount in dispute is $1,855.00. It was the Hearing Officer's recommendation that the initial determination to deny approval of the Request for Preauthorization of dental services be upheld (i.e., orthodontic treatment for malocclusion due to misalignment of teeth). It was his finding that the services in dispute did not constitute "adjunctive" dental care as stipulated in applicable Army Regulation AR 40-121 [Air Force Regulation 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 orthodontic services, for which the requested approval of CHAMPUS benefits was denied, constituted adjunctive dental care. By law, CHAMPUS benefits for dental services 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 (in effect at the time the care was initiated in February 1976) defined adjunctive dental care as "... that dental care required in the treatment or management of a medical or surgical condition other than dental ... "[emphasis added] (Reference: Army Regulation 40-121 AFR 168-9], Chapter 5, Section 5-2 (j)) The applicable regulation further stated "...the primary [medical] diagnosis must be so specific so that the relationship between the primary condition and the requirement

for dental care in the treatment of the primary 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 AR 40-121 AFR 169-9], Chapter 1, Section 1-2 e.)

o Prior Medical History. First it was claimed that the child's prior medical history--i.e., specifically an episode of acute illness which had occurred several months prior to initiation of the disputed dental care--supported the medical need for the orthodonture. The Hearing File of Record does indicate that the appealing party's son experienced an episode of Otitis Media in July 1975 which was treated in a Uniformed Service facility. The condition developed complications, and a short hospital stay was required for the treatment of Otitis Media, Right Middle Lobe Pneumonia, Acute Glomerulonephritis and Hypertension. (Although clinical documents relating to the inpatient hospitalization were not made available for review, from anecdotal information in the Hearing File of Record it would appear that the condition resembled a classic severe steptococcus infection.) Antibiotic therapy was instituted and the hypertension was treated with diuretic medication, antitensive drug therapy and a restricted salt diet. Follow-up care was conducted by the physicians at the Uniformed Service facility who monitored kidney function, blood pressure and the ears. The beneficiary responded to the prescribed therapy and by November 1975 the examining physician reported that that the kidney problems were resolved and that the ears were normal. Although some decreased hearing acuity was reported during the treatment of the Otitis Media, none was reported during the November examination. There was no evidence presented (1) that the Otitis Media, Glomerulonephritis or Hypertension were chronic problems that continued beyond the acute episode, (2) that any active medical treatment of these conditions was still under way at the time the orthodonture was initiated (or at any time during the twenty-eight months the dental regimen continued), or (3) that there was any relationship between the misaligned and malposed teeth and the prior acute episode of illness. That the boy experienced the acute illness is not disputed. However, the fact that prior medical history can be established is not unusual or controlling and in no way automatically qualifies subsequent dental care as "adjunctive." Further, since the clinical records indicate the various acute conditions were resolved before the dental work commenced, the orthodontia

could not have been related to, and an integral part of, the treatment of those medical conditions. (Reference: Army Regulation AR 40-121 AFR 168-9], Chapter 5, Section 1-2 e.)

o Nutritional Problems. Next the appealing party claimed that the disputed dental care was necessary to alleviate nutritional problems being experienced by his minor son. The Hearing File of Record does contain a very short statement from the child's Military pediatrician which included a reference to a nutritional problem. However, the type of nutritional deficit was not described nor was there any laboratory or other clinical data submitted that confirmed the existence of anemia, avitaminosis, malabsorption syndrome or overt malnutrition. No plan of medical treatment intended to combat the claimed nutritional problems was presented or described. Documentation in the Hearing File of Record indicated that the child's height was fifty-three and one quarter inches (53-1/4) and that his weight ranged from fifty-seven and one half (57-1/2) to sixty and one half (60 1/2) pounds. This presents a picture of a small to average nine year old boy with a lean stature--not the picture of an emaciated or malnourished individual. Further, there was no evidence presented that would indicate the claimed nutritional problems were directly related to the malocclusion or malpositioning of teeth. Social, economic, educational, ethnic and preference factors exert a high degree of influence on dietary intake and habits. Although good dentition and proper mastication contribute to the digestive process, adequate nutrition, life, and health can be sustained even in the total absence of dentition. Considering the many factors associated with nutrition, improving the ability to bite and chew would not, in and of itself, guarantee an improved nutritional state. Further, even if a nutritional deficit was actually present, there was no evidence submitted to indicate it was under any active medical treatment at the time the orthodonture was performed. It is our finding that it was not clinically confirmed that a nutritional problem actually existed. Even if it did exist, it was not established that the the dental care was an adjunctive therapy in the current active treatment of the nutritional problem since there is no evidence to substantiate that this condition was under medical management. However, the question is essentially moot because CHAMPUS does not be consider Orthodontia to be specific treatment for nutritional problems. Further, although it is recognized that good oral health is a factor in the general overall health of an individual, the applicable regulation states, "Dental care to improve the general health of the

patient is not necessarily adjunctive care." (Reference: Army Regulation AR 40-121 AFR 168-9], Chapter 1, Section 1-2e.)

- Improved Mastication. It was also claimed that the requested orthodonture improved the child's mastication because it enabled him to bite and chew better. First, the extent of the claimed masticatory impairment was not described or documented. However, again, the question is moot because even if the child's mastication was severely impaired, it would still involve only a "dental" condition, not a medical one. The fact that the child's mactication may have been improved by the orthodonture is not sufficiently compelling to support a finding that the dental care was "adjunctive." (Reference: Army Regulation AR 40-121 168-9], Chapter 5, Section 5-2 (j))

- Prevention. It was also claimed that the requested dental work was necessary to improve mastication which in turn would prevent eventual traumatic injury and loss of dentition. The question of "prevention" is not persuasive since no documentation was submitted which supported this claim. However, again, the question is moot. First, if the orthodontia did, in fact, lessen the chance of eventual loss of teeth, this still would not qualify the dental care as "adjunctive" because it involves a "dental only" condition. Care related to a dental only condition is never "adjunctive" dental care regardless of its merits. (Reference: Army Regulation AR 40-121 Air Force Regulation AFR 168-9], Chapter 5, Section 5-2(j)) Additionally, preventive services, whether medical or dental, are generally excluded by law.

- Purpose of Orthodontia. The Hearing File of Record indicates the attending orthodontist reported upon examination that a malocclusion was exhibited "whereby the maxilla anterior teeth were severely rotated and occluding end on and in crossbite with the mandibular anterior teeth." No other disease of the teeth or supporting structures was reported. There was no evidence or claim made that the malocclusion was caused by any malformation in the bone structures or from injuries to the mouth or teeth. No evidence was submitted that the minor child had any deformities or malformations of the jaws or palate. There was no indication of scoliosis, for which a Milwaukee Board was required. Further, there was no indication that the diagnosed malocclusion was interfering with the resolution of any medical of surgical condition. Rather, the treatment plan was designed to realign and reposition the teeth--i.e., primarily to assure the child would have straight,

aesthetically acceptable teeth. There was no evidence presented that the orthodonitia was expected to remedy or treat a medical condition--only that it corrected the dental malocclusion. (Reference: Army Regulation AR 40-121 AFR 168-9], Chapter 5, Section 5-2 (j))

- o Dental Conditon Only. Despite claims to the contrary, the only condition present was a dental condition--i.e., malposed and misaligned teeth. The disputed orthodonture was not medically necessary to, or an integral part of, current treatment of any medical or surgical conditon. By definition, dental care related to a dental only condition cannot qualify as "adjunctive." (Reference: Army Regulation AR 40-121 AFR 168-9] Chapter 5, Section 5-2 (j))

SECONDARY ISSUES

During the appeal process certain secondary issues surfaced, most of which were raised by the appealing party.

- o Request for Preauthorization. The appealing party claimed to have initiated a Request for Preauthorization of the orthodonture in December 1975. However, the Hearing File of Record indicates that his December 1975 communication was not specifically a Request for Preauthorization. It was instead a general inquiry which received a general response from the then CHAMPUS dental contractor. The formal Request for Preauthorization (along with the necessary supporting documentation) was dated 8 July 1976, and it was denied on 27 July 1976. This was several months after the orthodonture was actually initiated. Since all levels of appeal decisions (including this FINAL DECISION) were based on the substantive issue of whether the dental care qualified as "adjunctive," this violation of 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 would not extend benefits. While it is unlikely that a denial would have kept the sponsor/parent from proceeding with the orthodonture for his son, it would have alerted him to the fact that the dental care would require personal financing. Further, had the appeal review indicated that the dental care actually qualified as "adjunctive," 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 preauthorization was not obtained (which the Hearing File of Record does not support in this case).

- Congressional Intent. The appealing party steadfastly maintained that it was the intent of the Congress that full dental care be provided active members of the Uniformed Services and their dependents. He opined that the bureaucratic structure was imposing limitations not intended by the Congress. This is not correct. The dental limitations are part of the law as enacted by Congress. (Reference: Chapter 55, Title 10, United States Code, Section 1079) It is because CHAMPUS does not include a comprehensive dental program that it was necessary to review the orthodontia from the narrow standpoint of whether it qualified as "adjuctive." If a full dental program were, in fact, included under CHAMPUS, whether or not the orthodentia was "adjunctive" to the treatment of a medical condition would not have been a consideration.

- Based on Military Medical/Dental Recommendations. The appealing party maintained that because the Military pediatrician and dentist (who were caring for his son) recommended that the disputed dental care be obtained, it should not be questioned. By implication, he challenged the right of CHAMPUS to "overrule" a Military physician or dentist. First, Military physicians and dentists are free to treat, recommend and refer patients in keeping with applicable Uniformed Service regulations. However, this does not commit CHAMPUS to extend benefits for any services that might be received in the civilian sector. Regardless of the merits, 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 made 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 obtaining certain medical or dental care from the civilian sector is not controlling or binding on the Program any more than medical or dental care ordered or directed by a civilian physician or dentist is binding. In determining whether CHAMPUS benefits can be extended for a specific service or supply, the law and applicable regulations are controlling.

- Changes in Dental Contractors. The appealing party complained that he had to deal with three separate CHAMPUS dental contractors in his efforts to obtain payment for his son's orthodontia. It was implied that this interfered with the appeal process. It is acknowledged that the period during which the dental services was initiated and rendered was one of contractor turbulence for the particular state where the care was obtained. And it is also true that the problems that led to the selection of the third CHAMPUS Dental Contractor (within a period of a year) involved claims and correspondence backlogs with resulting beneficiary confusion and frustration. However, while this episode of contractor upheaval is regretted, a review of the Hearing File of Record does not support a finding that it had any impact on the decision relative to the substantive issue. In fact, all the dental contractors that reviewed this case, independently found that the orthodontia in question did not qualify as "adjunctive" dental care.

- Army Regulation AR 40-121 vs. Air Force Regulation AFR 168-9. There was some confusion on the part of the appealing party concerning the applicability of Army Regulation AR 40-121 to this appeal as opposed to Air Force Regulation AFR 168-9. Unfortunately the Hearing Officer did not understand the relationship of the two regulations and therefore was unable to be responsive to the appealing party's concern. These two regulations comprise part of the joint regulations of the Uniformed Services, entitled "Medical Services - Uniformed Services Health Benefits Program." The other Uniformed Services have similar regulations--(1) the SECNAV Instruction 6320.8D, (2) Public Health Service General Commandant Instruction 6320.2B, and (3) Environmental Science Services (now National Oceanic and Atmospheric Administration) Administrative Regulation CO-4. At the time these joint regulations were initially promulgated, the Army was the executive agency for CHAMPUS (the Program is currently administered through the Office of the Secretary of Defense). Because of its executive agency role, it became common usuage to refer to the Army regulation. Even after OSD assumed responsibility for administering the Program, this habit continued. However, it is a matter of semantics only--because the referenced Air Force regulation is similar and equally applicable. The appealing party can be assured that the proper regulation was applied in reviewing his appeal.

o Period of Time in Appeal. The appealing party complained about the lengthy period of time his case had been in appeal. This is a legitimate complaint, one of which the Department of Defense is aware, and efforts are being made to improve the situation. However, it must be recognized that the formal CHAMPUS Administrative appeals system is relatively new and only recently become operational at all levels. Procedures and staffing requirements are still in the developmental stages. It should also be pointed out that had there been no appeal system available, the appealing party would not have been afforded a hearing to present his position nor provided an appellate review by the Office of the Assistant Secretary of Defense (Health Affairs). Since the dental care in dispute in this appeal was actually rendered before the formal appeals procedure was implemented, had it not been in place no review would have been available to the sponsor/parent beyond the OCHAMPUS response dated 1 November 1978. In any event, while delays in the current system are acknowledged, this does not overcome the primary responsibility in an appeal--i.e., to issue a decision which is in compliance with the law and applicable regulations.

SUMMARY

This FINAL DECISION in no way implies that the minor child in this case did not require the orthodonture to correct the malocclusion caused by misaligned dentition. It only confirms that the services in dispute did not qualify as "adjunctive" dental care as set forth by law and regulation, and therefore cannot qualify for benefit consideration under CHAMPUS.

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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)