ASSISTANT SECRETARY OF DEFENSE

WASHINGTON D C 20301

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HEALTH AFFAIRS

FINAL DECISION: OASD(HA) Case File 11-80
(Minor Child)
USN, Appealing Party

The Hearing File of Record, the transcript of the oral testimony presented at the Hearing, the Hearing Officer's RECOMMENDED DECISION, and the Memorandum of Concurrence from the Director, OCHAMPUS, on OASD(HA) Appeal Case No. 11-80, have been reviewed. The amount in dispute is approximately $45,000 a year on a prospective basis.[1/]

It was the Hearing Officer's recommendation that the CHAMPUS Fiscal Intermediary's initial determination to deny further CHAMPUS Basic Program benefits for care of the minor child (beneficiary) be upheld. It was his finding that the inpatient care in dispute was primarily custodial in nature. It was his further finding that the type of care in question would more appropriately be considered under the Program for the Handicapped as had been proposed by OCHAMPUS. After due consideration and careful review of the evidence presented, the Principal Deputy Secretary of Defense (Health Affairs), acting as the 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 appeal is whether or not the inpatient care the beneficiary/patient is receiving is primarily custodial. Related to this issue is the question of whether or not the child requires care available only in the acute hospital

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1/ As a result of legal action initiated by the sponsor, under a Stipulated Motion to Dismiss OCHAMPUS agreed to continue CHAMPUS Basic benefit payments pending completion of administrative review of the appeal. OCHAMPUS also agreed that if the FINAL DECISION terminates any or all benefits, the termination of benefits will not be effective until fifteen (15) days after the date of the FINAL DECISION.

inpatient setting. Also at issue is whether the OCHAMPUS decision that the care should be considered under the Program for the Handicapped was appropriate.

The applicable regulation in effect at the time the disputed inpatient stay occurred defines "Custodial Care" as "... care rendered to a patient (a) who is mentally or physically disabled and such disability is expected to continue and be prolonged, and (b) who requires a protected, monitored and/or controlled environment whether in an institution or in the home, and (c) who requires assistance to support the essentials of daily living, and (d) who is not under active and specific medical, surgical and/or psychiatric treatment which will reduce the disability to the extent necessary to enable the patient to function outside the protected, monitored, and/or controlled environment." (Reference: CHAMPUS Regulation DoD 6010.8-R, Chapter II, Subsection B.47.)

In the section which outlines Basic Program benefits the regulation further states... "A custodial care determination is not precluded by the fact that a patient is under the care of a supervising and/or attending physician and that services are being ordered and prescribed to support and generally maintain the patient's condition, and/or provide for the patient's comfort, and/or assure the manageability of the patient. Further, a custodial care determination is not precluded because the ordered and prescribed services and supplies are being provided by a R.N. or L.P.N." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Paragraph 12.a.)

Also in the benefits section, the regulation states, "It is not the condition itself that is controlling but whether the care being rendered falls within the definition of custodial care." (Reference: CHAPTER IV, Section E., Paragraph 12.b)

The regulation specifically excludes custodial care under the section describing exclusions and limitations, stating, " ... [excluded is] Custodial Care regardless of where rendered." [emphasis added] (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Subsection G.8.)

The applicable regulation also speaks to the level of care issue. In the section on limitations and exclusions it states, "... [excluded are] services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Subsection G.3.) In addition the regulation provides that benefits

for institutional services "... are subject to any and all applicable definitions, conditions, limitations, exceptions and/or exclusions as may be otherwise set forth in this or other Chapters of this Regulation." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section B.)

The Regulation also defines "Skilled Nursing Service" [in part] as "....a service which can only be furnished by an RN (or LPN or LVN) [provided an RN is not available] and required to be performed under the supervision of a physician in order to assure the safety of the patient and achieve the medically desired result ... skilled nursing services are other than those of daily living or which could be performed by an untrained adult with minimum instruction and/or supervision." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsection B.161) The regulation defines "Essentials of Daily Living" as that care "... which consists of providing food (including special diets), clothing and shelter; personal hygiene services; observation and general monitoring; bowel training and/or management; safety precautions; general preventive procedures (such as turning to prevent bedsores); passive exercise; companionship; recreation; and such other elements of personal care which can reasonably be performed by an untrained adult with minimum instruction and/or supervision." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsection B.67)

The applicable regulation also provides authority for the Director, OCHAMPUS, to effect transfer to the Program for the Handicapped (PFTH) stating [in part] ... "The Director, OCHAMPUS (or a designee) is authorized to review a Basic Program case and make a determination that the particular beneficiary meets the definition of a moderately or severely retarded and/or seriously physically handicapped whether or not an application for benefits under the PFTH has been submitted by the sponsor." (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER V, Section K) The regulation defines "Mental Retardation" [in part] as "... subnormal general intellectual functioning ... severe mental retardation relates to IQ ... 35 and under." The definition of "Physical Handicap" states [in part] "...is of such severity as to preclude the individual from engaging in substantially basic productive activities of daily living expected of unimpaired persons of the same age group." (References: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsections B.107. and B.133.)

The appealing party and his legal representative initially submitted statements and/or testimony which, in their view, supported the position that the inpatient care being rendered the minor child in this case was not and is not now primarily

custodial in nature. It was also their position that the acute hospital inpatient setting was and is necessary to maintain the patient, and that the services being rendered represent skilled nursing care. It was also implied that the patient's condition itself should be cause for CHAMPUS Basic Benefits to be continued. Nonetheless, it is the finding of the Principal Deputy Secretary of Defense (Health Affairs) that the facts presented in this case do not support the appealing party's position and that the services being provided to the minor child represent what can only be termed as classic custodial care.

In order to assure that the appealing party and all others concerned fully understand the bases on which the initial denial decision is being reaffirmed, each point is addressed in this FINAL DECISION.

1. Patient's Condition. The appealing party claimed that CHAMPUS Basic benefits should be provided because of the seriousness of the patient's condition. The Hearing File of Record thoroughly recounts the patient's medical history and clearly establishes the gravity of the minor child's physical problems and mental deficit. The patient is now eight (8) years old. She has no control over her body functions, has no voluntary motor functions, cannot feed herself, is apparently both blind and deaf, and cannot speak. Her general appearance is described as tremerous, with abnormal spastic movements of eyes and extremities, having poor motor control, severely retarded, and generally comatose. The patient's functional age was described as under one month. In a deposition given in connection with a separate legal action, one of the child's physicians described her condition as being that of "a vegetable." CHAMPUS has not questioned the severity of the child's condition in either the initial denial or subsequent appeal decisions. The matter at issue is not her condition but rather the kinds of services being rendered for her care--i.e., does it represent therapeutic and skilled nursing services or is it primarily custodial care. While we do not dispute the fact that the child requires constant care, it is our finding that the kind of care being rendered is custodial in nature, primarily designed to provide the essentials of daily living, and thus does not qualify for Basic Program benefits. (References: CHAMPUS Regulation DoD 6010.8-R CHAPTER II, Subsections B.47, B.67 and B.161; CHAPTER IV, Section E, Paragraphs 12.a & 12.b)

2. Acute Inpatient Hospital Setting Required. It was asserted by the appealing party that the patient requires, on a constant, 24-hour-a-day basis, the acute level of care and

professional skills and complex medical facilities available only in the acute hospital inpatient setting. (The appealing party also implied conversely, that because the patient is confined in a hospital which has acute care facilities, that Basic Program benefits should continue to be payable. In other words, whether required or not, the fact the child is in an acute hospital setting should result in automatically extending Basic Program benefits for her care--a "catch-22" premise which the Program rejects out-of-hand.) The clinical documentation included in the Hearing File of Record indicates that on an ongoing basis this patient needs constant supportive care and general observation. The facility in which this patient is now confined clearly is equipped to provide care to the critically ill. The Hearing File of Record gives no evidence, however, that the sophisticated therapeutic and rehabilitative services of the facility were used or prescribed. As a matter of fact, the evidence submitted strongly supports a finding that the primary reason for the admission of the minor child to the hospital was to relieve the appealing party and his wife of the daily responsibility for her care--not because the acute hospital setting was medically required. It is not argued that care of a child in the condition described in this appeal is not extremely difficult, physically and psychologically debilitating and even disruptive to the family involved. That a decision was made to institutionalize the child is understandable. It does, however, contradict the appealing party's assertion that the acute hospital setting was medically required for the child. That the family found itself no longer able to cope with the child's care does not equate to a finding that it was not possible to provide the care in the home (perhaps through the use of attendants) or in a lesser facility than an acute hospital. The decision to admit to an acute care hospital was a personal one of the family, perhaps based on the assumption (albiet mistaken) that if the child were placed in such a facility, CHAMPUS benefits would be assured. Even if it had been found that the hospital setting was an appropriate level of care for this child, it would be a moot point. Regardless of the type of institution in which a patient is confined or the type of care that facility is equipped to render, the decision as to whether or not CHAMPUS Basic Program benefits are provided depends entirely on a determination that whether or not the specific services being provided meet CHAMPUS criteria. Denial in this case was based on the finding that the services being rendered are primarily custodial. Again, it is not the condition of the patient that is controlling nor the type of facility.

What is controlling is the type of care being rendered. It is our position that the primary objective of the admission was to relieve the family of the burden of caring for the child, not because she required an acute hospital setting. And further, regardless of the fact the care was rendered in a hospital capable of providing sophisticated medical and rehabilitative care, the care rendered the minor child in this case was primarily custodial in nature and thus excluded under the CHAMPUS Basic Program. (References: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsections B.47 and B.67; CHAPTER IV, Section E, Paragraph 12.9 and 12.b; CHAPTER IV, Subsections G.3 and G.8.)

3. Skilled Nursing Services Required. The appealing party also strongly asserted that the patient requires skilled nursing care on a round-the-clock basis.

- o Seizure Monitoring. It was claimed that the child is subject to seizures and that this requires the presence, on a 24-hour basis, of a professional nurse with direct physician supervision. Seizures are often secondary to degenerative central nervous system conditions. Evidence in the Hearing File of Record indicates that during the acute hospital confinement for which clinical records were provided, three episodes of seizures were reported over an 18-month period. These seizures were controlled with medication. Occurrence of these episodes on only three occasions does not support a finding that constant and continuous monitoring is needed for seizure control, nor that the acute hospital inpatient setting is needed to administer the anticonvulsive medications. Patients susceptible to seizures, even those who experience seizures on a daily basis, are routinely handled as an outpatient, with the seizure monitoring provided by family members or other adults. Immediate availability of appropriate medications is the key in seizure control--which can be administered by any adult with minimum instruction and supervision. In such situations it is not uncommon for standby instructions to be provided to the parents or other attendants as to permitted dosage increases when such an incident occurs. The fact that a patient is susceptible to seizures and is provided medication for their control is not sufficiently compelling to require the presence of a professional nurse nor direct physician supervision. Seizure monitoring can be and routinely is adequately handled by parents or other adults with minimum instruction and supervision. It may be necessary to occasionally institutionalize such a patient for stabilization, but this would be an exception not the routine.

- Apnea Monitoring. The appealing party also claimed the patient required constant observation and monitoring of her respiratory functions. It was stated the patient was subject to episodes of apnea (cessation of breathing) and therefore required confinement in a facility capable of providing immediate medical care. The evidence in the Hearing File of Record shows that there was one episode of pnuemonia and several episodes of upper respiratory infection and airway congestion. Respiratory stridor, poor air exchange, and breathing irregularity were also reported in association with an elevated temperature. There is no evidence in the Hearing File of Record that episodes of respiratory difficulty were continuous and required either constant monitoring or confinement in an acute care setting. Hospital records show clearly that episodes of respiratory problems were not frequent and were alleviated without use of emergency medical equipment or "extraordinary" medical intervention. Based on evidence in the Hearing File of Record, we must conclude that respiratory problems responded well to routine therapy (antibiotics and decongestive drugs) which, again, could be and routinely are administered on an outpatient basis by the average adult with minimum instruction and supervision. When these respiratory problems occurred, they tended to reflect the usual progression of such disorders and did not represent an immediate threat to life. It would appear, therefore, that the general care which parents or other adults routinely provide to children would provide sufficient monitoring and observation for the purpose of watching for indications of respiratory distress. Further, use of an apnea monitoring device would further lessen the need for observation. Had these episodes occurred at home or in a lesser facility than a hospital and if they persisted, adequate time would have been available to seek additional medical assistance.

- Infectious Diseases. The appealing party asserted that the patient was susceptible to pneumonia and therefore required care in an institution that could provide immediate medical care. Hospital records show episodes of respiratory infections in March, May and June 1979. The records also show a urinary tract infection in May and June 1979. Upper respiratory problems, pneumonia, and urinary tract infections are generally secondary problems in severely disabled patients, particularly those with little or no motor ability. For this patient,

episodes of respiratory problems and urinary tract infections were relatively infrequent considering the patient's condition. When they did occur, the patient's response to medication was good. There is no evidence in the Hearing File of Record to indicate there were any episodes of overwhelming systemic dysfunction or septicemia, or that the patient required excessive or unusual doses of medications to combat these conditions. There also is no evidence to indicate the patient required oxygen therapy during episodes of respiratory infection, or if she had, whether this kind of therapy would have been given, considering the "NO CODE" 2/ status of this patient.

o Nursing Service Rendered. It was strongly asserted by the appealing party that the kind of nursing care being provided his daugther represented skilled nursing services which could only be rendered by a professional nurse under the direct supervision of a physician. A review of the clinical documentation indicated that "supportive" nursing was ordered and that the following services were being provided on a routine basis:

- Administration of Oral Medication
- Taking of Vital Signs Periodically
- Checking Weight Weekly
- Bowel Management; Use of Suppositories or Administration of Enemas when Required
- Incontinence Care
- Positioning; Passive Exercise
- Stimulation; (soft toys, music, etc.)
- Placement in Chair
- Feeding
- Personal Hygiene
- Dressing the Patient
- General Observation
- "Tender Loving Care"

2/ "NO CODE" status designates patients whose conditions are such that it is not considered useful to prolong their lives by extraordinary means. For example, the "NO CODE" status would preclude use of devices to maintain respiration should a prolonged episode of apnea occur.

None of the listed services is a skilled nursing service that could only safely be performed by a professional nurse under the supervision of a physician. A review of the list of services performed on a routine basis indicates that the care was, in fact, supportive only, almost totally related to the essential of daily living --i.e., custodial in nature--and did not require the scientific training of a professional nurse. They are types of services which can readily be performed by any adult with minimum direction and supervision.

The clinical evidence in the Hearing File of Record and the oral testimony does not support the view that the services being rendered represented skilled care that could only be rendered in an acute hospital getting under the direct supervision of a physician. The types and frequency of infection experienced by and anticipated in this patient did not require continued confinement in the acute hospital inpatient setting, and could have been managed elsewhere, including the home. The patient's "NO CODE" status itself contradicts the claim that an acute care facility is the only appropriate setting for this patient since this indicates the sophisticated technology available at the hospital would not be utilized even if needed. Further, we are not persuaded that the acute hospital inpatient setting was required for the kind of observation provided this patient. In general the services are of the kind routinely provided in a lesser facility or in the home, and are those which can be provided by the average adult with minimum instruction and supervision. It is not reasonable to maintain a patient in the acute inpatient hospital setting simply on the basis that there is a potential for serious medical problems. This represents an inappropriate use of the acute care hospital. Transfer to the acute hospital is always an option should an emergency occur. (References: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsection B.47, B.67 and B.161; IV, Subsection G.3 and G.7)

5. Custodial Care. Notwithstanding claims to the contrary by the appealing party, the clinical information in the Hearing File of Record is overwhelmingly persuasive and mandates the conclusion that the care which has been, and apparently continues to be, rendered the patient/child is primarily custodial in nature. The patient's disability is permanent--i.e., expected to continued and be prolonged; the hospital and the nursing staff provide a protected, monitored and controlled environment for her; the services rendered her were specifically designated as supportive, dealing almost exclusively

with the essentials of daily living; and the patient is not now, nor is she expected to be in the future, under any therapeutic regimen which could be expected to reduce her disability. This finding is further supported by the "NO CODE" status assigned to her at the hospital in which she is confined. That the patient is under a physician's supervision and that services are rendered to support and maintain her condition and provide for her comfort and manageability, does not preclude a custodial care finding. In fact this must be considered a classic custodial care case from the date of admission. The CHAMPUS Fiscal Intermediary made a gross error in authorizing the initial extension of benefits. Upon receipt of the initial claim, Basic Program benefits should have been denied and the case referred to OCHAMPUS for consideration under the Program for the Handicapped. (References: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsection B.47; CHAPTER IV, Section E, Paragraphs 12.a and 12.b); CHAPTER IV, Subsection B.7 CHAPTER V, Section K.)

6. Consideration Under the Program for the Handicapped. The appealing party strongly disagreed that his daughter's case was more appropriately considered under the Program for the Handicapped than under the Basic Program. A review of the Hearing File of Record indicates the child's physical condition has lasted more than twelve (12) months and is expected to be terminal. Her primary degenerative neurological disability requires that she receive assistance to support the essentials of daily living. While the extent of her condition does not permit any accurate measurement of IQ, her physical disability and mental retardation are of such severity that she only functions at the one month level. It is our finding that the child's general condition (and the fact she is the minor child of an active duty member) qualified her for consideration under the Program for the Handicapped. OCHAMPUS was correct to deny further Basic Program benefits and to notify the sponsor to make application under the Program for the Handicapped. As stated previously, the CHAMPUS Fiscal Intermediary (FI) made a gross error in adjudicating the initial claim(s) under Basic Program benefits for the inpatient hospital stay of this child. Again, the FI should have denied Basic Program benefits and suggested that the sponsor apply for benefits under the Program for the Handicapped. It is also unfortunate that under the Stipulated Motion to Dismiss OCHAMPUS agreed to continue to extend Basic Program Benefits in this case until fifteen (15) days after the rendering of a FINAL DECISION. Our review of this case leaves no doubt the care being rendered

is custodial in nature and as such is specifically excluded by law. As a result of the FI permitting the case to enter into benefits, and OCHAMPUS agreement to continue those benefits during the administrative appeal process, in excess of $100,000 in CHAMPUS Basic Program benefits have been paid erroneously. The OCHAMPUS decision to terminate benefits and transfer the case for consideration under the Program for the Handicapped was correct and should have been permitted to stand. (References: CHAMPUS Regulation DoD 6010.8-R, CHAPTER II, Subsection B.107. and B.133; and CHAPTER V, Section K)

SECONDARY ISSUES

The appealing party raised several secondary issues which he asserted supported special consideration to continue to extend Basic Program benefits. In fact, in discussing the secondary issues he, in effect, acknowledged that the care being provided his daughter was custodial in nature.

1. Cause of Neurological Defect. The appealing party asserted that the patient's severe physical disabilities and extreme mental retardation was caused by a smallpox vaccination administered at a Military facility when the patient was nine (9) months old. There was a strong implication in this appeal that because of the alledged Military responsibility for the patient's condition, CHAMPUS Basic Program benefits should be provided whether or not the care was and is custodial. The Hearing File of Record includes several assertions concerning the cause of the disability, but no clinical documentation was provide which confirmed either that a vacination was actually performed at a Military hospital or that the disability was related. To the extent it could be determined from the Hearing File of Record, the parents have not been able to establish this claim legally. Whether the vaccination occurred, however, and if so, whether or not there is a relationship to the child's disabilities is a matter for the courts to decide, and is totally separate and apart from the decision in this appeal. Further, even if the relationship were legally established, the point is moot. CHAMPUS benefits are not determined based on the cause of a patient's condition. Benefits are payable when the specific services provided, and the conditions under which they are provided, meet CHAMPUS requirements. In this case, we find that CHAMPUS requirements for Basic Program benefits were not met because the care being provided is primarily custodial in nature and the institution (level of care) is

significantly beyond that necessary to provide adequate care. (References: DoD 6010.8-R, Chapter II, Subsection B.47; CHAPTER IV, Section E, Paragraphs 12.a and 12.b; CHAPTER IV, Subsection G.3 and G.7)

2. Other Custodial Cases Paid: Grandfather Clause. The appealing party (again in apparent contradiction to earlier positions that the care being rendered was not custodial) then claimed to have knowledge of numerous patients who are receiving "custodial" care similar to that being provided his daughter and who continue to receive CHAMPUS Basic Program benefits. This assertion apparently referred to those CHAMPUS beneficiaries who were in benefits at the time the current CHAMPUS regulation was implemented in June 1977 and who were subsequently determined to be receiving custodial care as defined in said regulation. A regulation change was promulgated--i.e., a specific "grandfather clause"--which approved continuation of CHAMPUS Basic Program benefits for about 160 such cases. Since the patient/child in this case was not admitted to the civilian hospital until September 1978, the "grandfather" provision clearly does not apply. Further, even if the case had been in benefits as of 1 June 1977, it still would not qualify because the level of care (use of the acute hospital) has been found unnecessary to provide the type of care rendered--i.e., it could not meet the test of reasonableness required under the "grandfather" provision. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER IV, Section E, Paragraph 12.e)

3. Sponsor's Decision to Remain on Active Duty. The appealing party indicated that the deciding factor in his decision to continue in Military service was availability of CHAMPUS benefits for his daughter. He claimed he was offered a GS-14 position in the Federal civilian service but decided not to make the change because he understood medical insurance coverage for civilian employees would not cover the kind of care his daughter is receiving. This is probably a correct understanding since to the best of our knowledge all Federal Employee Health Benefits Plans exclude custodial care and do not offer anything similar to the CHAMPUS Program for the Handicapped. Notwithstanding these observations, while it is recognized that benefits may well influence a decision to remain on active duty in the Military, it is not reasonable to assume that because such a decision is made, it in anyway modifies the conditions under which it is determined a case qualifies for benefits under CHAMPUS. Such decisions must continue to be based on law and applicable regulations.

4. Use of Discretionary Authority. Again contradicting their initial position that the care being rendered is not custodial, both the appealing party and the Attorney representative urged the use of Discretionary Authority to provide Basic Program benefits for continued inpatient custodial care for the minor child. The Discretionary Authority provision is not applicable to this case. Such discretion may be applied only under very unusual and limited circumstances. It cannot be applied to any situation that would affect a "class" of beneficiaries either directly or indirectly. Further, the provision specifically precludes waiving any requirements or provisions imposed by statute. Since the substantive issue of custodial care involves a specific statutory exclusion, Discretionary Authority is not an option in this case. (Reference: CHAMPUS Regulation DoD 6010.8-R, CHAPTER I, Section O.)

5. Objection: Department of Defense Representatives at Hearing. The appealing party's Attorney representative objected to the presence of certain Department of Defense officials at the hearing. The Hearing Officer heard the objection, noted it for the record, but ruled he found no problem with these individual monitoring the hearing. The Hearing Officer's action was correct. That the hearing was closed to the public is not the issue. It was a closed hearing but this would not preclude DoD representatives from being present inasmuch as DoD is charged with the responsibility for administering the Program which includes the CHAMPUS appeals system. It was entirely proper for DoD representatives to be in attendance. (There is no indication in the Hearing File of Record that these officials participated in, or in anyway interfered with, the hearing process.)

SUMMARY

This FINAL DECISION in no way implies the patient/child in this case does not require custodial care--she clearly does. That the custodial care must be rendered in an acute hopital sitting is strongly disputed, however. Notwithstanding the level of care issue, this FINAL DECISION confirms the finding that the disputed care being rendered in this case is primarily custodial in nature, has been since the time of admission and is therefore a type of care which does not qualify for CHAMPUS Basic Program benefits. In keeping with the Stipulated Motion to Dismiss, CHAMPUS Basic Program benefits will be terminated fifteen (15) days from the date of this FINAL DECISION. Since the sponsor (in this case also the appealing party) is on active duty, the case will be

reviewed for possible transfer to the Program for the Handicapped. The decision as to whether or not CHAMPUS Program for the Handicapped benefits are payable is dependent upon the availability of other state or local assistance programs.

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Our review indicates the appealing party has received full due process in his appeal. Insuance of this FINAL DECISION is the concluding step in the CHAMPUS appeal process. No further administrative appeal is available.

SIGNED

Vernon McKenzie
Principal Deputy Assistant Secretary
of Defense (Health Affairs)