ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

31 AUG 1982

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) File 81-02
	)	
SSN:	)	FINAL DECISION
	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 81-02 pursuant to 10 U.S.C. 1071-1989 and DoD 6010.8-R, chapter X. The appealing party in this case is the CHAMPUS beneficiary as represented by her husband. The appeal involves the denial of CHAMPUS coverage of hydrostatically occlusal equilibration, a hydrostatic appliance and a mandibular repositioning splint, and attendant services provided February 10 - August 30, 1979 for treatment of temporomandibular joint (TMJ) disturbance. The amount in dispute is $799.00.

The Hearing File of Record, the tape of oral testimony and argument presented at the hearing, the Hearing Officer's Recommended Decision and the Recommendation of Nonconcurrence from the Director, OCHAMPUS have been reviewed. It is the Hearing Officer's recommendation that CHAMPUS denial of claims for the above stated services and supplies be reversed and coverage extended. The Director, OCHAMPUS nonconcurs in the Recommended Decision and recommends rejection and issuance of a FINAL DECISION denying coverage of the care.

Under DoD 6010.8-R, chapter X, the Office, Assistant Secretary of Defense (Health Affairs) may reject the Hearing Officer's Recommended Decision and issue a FINAL DECISION based on the appeal record. After due consideration of the appeal record, the Acting Assistant Secretary of Defense (Health Affairs) rejects the recommendation of the Hearing Officer to extend coverage. I find the Recommended Decision is not based on substantial evidence and fails properly to apply Regulation provisions and prior FINAL DECISIONS on TMJ disturbance.

The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) therefore is to deny CHAMPUS coverage of services and supplies for treatment of temporomandibular joint sturbance provided the beneficiary from February 16 - gust 30, 1979 because the care is non-adjunctive dental care

and is excluded from CHAMPUS coverage. This FINAL DECISION is based on the appeal record as stated above and applicable authorities including precedental decisions of this office.

FACTUAL BACKGROUND

The beneficiary suffered intermittent episodes of tension headaches, mild to severe neck and shoulder pain, and tinnitus. On March 3, 1979, Dr. diagnosed her condition as temporomandibular joint disturbance (ICDA 524.5 - abnormal jaw closure) based on "her history and clinical findings of marked mandibular prognathism and tenderness to palpation over the condyl." did not request x-rays because "they have a limited clinical value." Based on the diagnosis the beneficiary was referred to Martin D. Lerman, D.D.S., for treatment. The beneficiary received hydrostatically directed occlusal equilibration, a hydrostatic appliance and a mandibular repositioning splint from from February 16 - August 30, 1979.

Three CHAMPUS claims totaling $2,795.00 are in issue: a participating claim from Dr. Lerman dated February 24, 1979 in the amount of $300.00 for care provided February 17-24, 1979, a nonparticipating claim dated April 10, 1979 of $845.00 for care received February 10 - April 5, 1979 (duplicating $300.00 in charges submitted on the February 24, 1979 claim); and a participating claim by Dr. dated October 25, 1979 of $1,950.00 for care provided April 14 - August 30, 1979. The appeal file reflects that other insurance has paid a total of $1,996.00 of the $2,795.00 in total charges leaving a balance in dispute in this appeal of $799.00.

The two CHAMPUS claims involving care from February 10 - April 5, 1979, were submitted to and denied by the CHAMPUS Dental Fiscal Intermediary, Blue Shield of California. The October 25, 1979 claim by Dr. was not submitted to the CHAMPUS Dental Fiscal Intermediary for processing; but was submitted to OCHAMPUS as part of the appeal of the fiscal intermediary's denial of the first two claims. OCHAMPUS determined the services included on the October 25, 1979 claim were an extension of the care for which claims were previously submitted and joined these charges for purposes of the appeal. This office concurs in that determination and does include these charges in the amount in dispute.

The patient's condition and treatment involved in this case are described in a written opinion submitted by the attending dentist. That statement, in part, is as follows:

> "[The patient] suffered from Cranio-Mandibular (or Temporomandibular Joint) Pain-Dysfunction Syndrome.

The Pain-Dysfunction Syndrome is a functional disorder; that is, one in which the affected tissue exhibit no organic dysfunction or infections, even though symptoms are present. The Syndrome results from the combination of two factors: distortion of the cranio-mandibular relationship, that is displacement of the mandible by a faulty dental occlusion (but invisibly so), and secondly, habitual tooth grinding and clenching, usually associated with stress.

When the occlusion does not correct physiologically with the muscles of mastication, the muscle must shift the mandible, each time the teeth meet, to a position which permits meshing of the teeth without trauma to these supporting tissues. Such an excessive demand for muscle-adaptive behavior eventually proves too much for certain muscles. These muscles become incoordinated and go into spasm. Primary symptoms (pain, limitation of jaw movement, etc.) thus arise in the muscles, usually along with secondary symptoms such as vertigo, tinnitus, and pain and discomfort in other areas of the head and neck. . . .

Since the primary etiologic factor is displacement of the mandible, treatment is essentially orthopedic in nature. The mandible, with its insertions of the masticatory muscles, must be repositioned relative to the skull, so as to reduce muscle over-adaption.

The treatment approach I used for [the patient] ... utilized a new type of fluid bearing appliance, worn by the patient, which enables the muscles to return to normal. As spasm diminishes and the muscles normalize, the muscles reposition the mandible to a cranio-mandibular relationship which requires less adaption. The occlusion is then correlated to this new relationship by occlusal equilibration (reshaping the occlusal surfaces of the dentition). Equilibration has no effect on dental conditions, such as cavities or missing teeth. When habitual tooth grinding or clenching occur thereafter, mandibular displacement no longer occurs, and adaption of the masticular muscles is minimized.

> My treatment of the Pain-Dysfunction Syndrome is two-staged. A hydrostatic appliance is first worn for a period sufficient to permit the muscles to return to normal, and for the mandible to be repositioned physiologically. This stage can take up to several months. Both the primary symptoms related to the masticatory muscles themselves and the more distant secondary symptoms usually improve at this point. Then, to maintain this improvement in symptoms, a series of hydrostatically - directed equilibration sittings are carried out until the point is reached where habitual tooth contact no longer causes mandibular displacement. The muscles usually remain asymptomatic."

The CHAMPUS Fiscal Intermediary for dental claims denied claims for the above listed care as non-adjunctive dental care. Informal and reconsideration reviews upheld the initial denial on the basis that dental care associated with temporomandibular joint disturbance is not considered to be adjunctive dental care. OCHAMPUS review was requested by the beneficiary.

The OCHAMPUS decision found the documentation did not establish the dental care was medically necessary for the treatment of a medical condition and was not essential for the control of a primary medical condition. Therefore, the care did not qualify as adjunctive dental care under Department of Defense Regulation 6010.8-R, the applicable regulation governing CHAMPUS benefits, and was not covered by CHAMPUS.

A hearing was requested by the beneficiary's representative, the sponsor. The hearing was held at Chicago, Illinois on November 24, 1980. The Hearing Officer has submitted his Recommended Decision. All prior administrative levels of 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 care provided constitutes medical or dental care and (2) if dental, whether the care qualifies as authorized adjunctive dental care. A secondary issue presented if the care is determined to be authorized adjunctive dental care, is whether preauthorization was obtained prior to receiving the care.

Temporomandibular Joint (TMJ) Disturbance

The primary contention of the appealing party's representative and medical witnesses is that TMJ disturbance is a medical, not dental condition; and, therefore, is covered under

the CHAMPUS Basic Program without the need for qualification as adjunctive dental care. The attending oral surgeon testified that the beneficiary was referred to the attending dentist following a medical diagnosis of TMJ disturbance based on physical symptoms described as including a history of intermittent episodes of tension headaches, mild to severe neck and shoulder pain, and tinnitus. The treatment was performed by a dentist, as opposed to a physician, because the dentist was specially trained to provide this type of care.

The appealing party's representative supported his contention with testimony from medical witnesses that the treatment was directed to the mandible (jaw) and was essentially orthopedic to relieve the medical symptoms of headaches, neck pain, clicking noises during mastication, and ringing in the ears. Further testimony pointed to the incidental relationship of the teeth to the etiology of TMJ and that the treatment (coroplasty, for example) was actually disadvantageous to the teeth. The appealing party's representative also briefly discussed other physical problems of the beneficiary - - osteoarthritis of the hands and carpal tunnel syndrome; however, he stated he had been medically advised these conditions were unrelated to the TMJ, which was confirmed by the medical witnesses at the hearing.

Based on the above testimony the Hearing Officer found the care to be medical, not dental care. The medical care was stated by the Hearing Officer to be jaw repositioning for correction of abnormal jaw closure based on the physical symptoms. Based on the record in this appeal and prior FINAL DECISIONS, I must disagree with the findings and recommendations of the Hearing Officer.

The record supports the finding that services and supplies furnished to the beneficiary were dental in nature. The occlusal equilibration (coroplasty) reshaped the surfaces of the teeth; the hydrostatic appliance (aqualizer) and the mandibular repositioning splint were placed in the mouth over and in between the teeth to relieve the pressure on the masticatory muscles.

The primary physical cause of the TMJ disturbance as reflected by the record also leads to the conclusion the care is dental. That is, the attending dentist submitted a statement for the record opining the cause to be a combination of two factors: "... distortion of the cranio-mandibular relationship, that is, displacement of the mandible by a faulty dental occlusion (but invisibly so), and secondly, habitual tooth grinding and clenching, usually associated with stress." At the hearing the attending dentist qualified this prior statement by testifying that the cause was not a traditional dental malocclusion; however, he also stated that the cause was "... the way the teeth position the jaw."

The Hearing Officer found the course of treatment was not directed to the teeth but to the mandibular joint. I find this conclusion unsupported by the evidence. The ultimate goal of the treatment was the relief of pain and other discomfort. While the treatment appears directed at muscle maladaption, the teeth appear as the focal point of the treatment (coroplasty, for example) because the position of the teeth in relation to the jaw was the physical cause of the muscle maladaption. Therefore, it cannot be said the teeth were not primarily involved in the treatment of the symptoms; i.e., correction of the misalignment of the teeth themselves.

The Office, Assistant Secretary of Defense (Health Affairs) has considered the dental versus medical nature of TMJ disturbance in two previous FINAL DECISIONS. In OASD(HA) Case File 08-79 and 14-79, this office determined TMJ disturbance is a dental, not medical condition. Case file 08-79 involved similar services as herein provided; e.g., occlusal adjustment and a correctional splint. More importantly, the question of pain was considered in both of these decisions. As the pain was essentially related to a dental cause (the teeth and supporting structures), this office held the presence of dental related pain indicates a dental condition.

The Hearing Officer attempted to factually distinguish these prior FINAL DECISIONS from the appeal herein apparently based on his opinion the prior decisions addressed a greater degree of dental involvement. However, the clear import of the prior decisions of this office is that TMJ disturbance is of dental origin and therefore treatment of this condition is dental. I find no cogent factual distinctions between this appeal and the previous decisions to warrant reversal or modification of this determination. The record does not reflect the existence of temporomandibular joint disease, such as rheumatoid arthritis or osteoarthritis, nor does the record indicate a skelatal deformity of the jaw or dislocation of the temporomandibular joint. Rather, the record indicates a functional impairment of the dentition (i.e., faulty dental occlusions) generally referred to as malocclusion. Therefore, I find the treatment provided the beneficiary in the present appeal for TMJ disturbance to be dental and not primary medical care.

Adjunctive Dental Care

Under 10 U.S.C. 1079, only dental care required as a necessary adjunct to medical or surgical treatment may be provided. The implementing Regulation, DoD 6010.8-R, defines adjunctive dental care as:

> "... 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 conditions and is essential

to the control of the primary medical condition." (DoD 6010.8-R, Chapter IV, E.10.)

Excluded from the concept of adjunctive dental care are dental services which involve only the teeth and/or their supporting structures.

As determined above, the primary condition treated, TMJ disturbance, is a dental, not medical condition. The symptoms of pain in the temporomandibular joint - headaches, neck and shoulder pain - are related to maladaption of the teeth to the jaw. Therefore, there is no primary medical condition, a basic criteria for adjunctive dental care. As the care provided involved only the teeth - aqualizer, coroplasty, and repositioning splint - the care is specifically excluded under DoD 6010.8-R. Therefore, I must conclude the services and supplies provided the beneficiary do not meet the criteria of adjunctive dental care.

SECONDARY ISSUES

Preauthorization

Under DoD 6010.8-R, chapter IV, E.10, written preauthorization is required for all covered adjunctive dental care. The record reveals no request for written preauthorization of the services and supplies was made.

The appealing party's representative testified at this hearing that preauthorization was not requested as the care was thought to be medical. The Hearing Officer found preauthorization was not required as the care was medical, not dental. In view of my finding that the treatment provided the beneficiary for TMJ disturbance to be dental and not primarily medical care, I reject the Hearing Officer's finding on preauthorization.

The appealing party's representative also stated in correspondence to OCHAMPUS that an employee of Wisconsin Physician's Service telephonically advised him, prior to the beneficiary's treatment, that treatment for TMJ disturbance was a CHAMPUS covered benefit. It is noted that Wisconsin Physicians Service is the CHAMPUS Fiscal Intermediary for medical claims in the State of Illinois. All dental related claims (and requests for preauthorization) are processed separately under contract with Blue Shield of California. Assuming the appealing party's representative's statement regarding the conversation is accurate, erroneous opinions from a fiscal intermediary, particularly one not contractually charged with responsibility for this type of care, cannot alter statutory or regulatory provisions pertaining to CHAMPUS benefits.

Such misinformation, if occurring, is precisely the reason for the written preauthorization requirement in this difficult area. If the beneficiary (or her representative) had requested written preauthorization from Blue Shield of California prior to treatment, she would have been advised CHAMPUS would not cost-share this care. While it is unlikely a negative determination would have kept the beneficiary from proceeding, it would have alerted her to the fact that the care would require some personal financing in addition to other insurance payments. As preauthorization was not obtained, the services and supplies provided in this appeal are not covered under CHAMPUS.

Therefore, even if the services in dispute were determined to be adjunctive dental care, failure to obtain written preauthorization as required in the Regulation would prevent CHAMPUS payment of the services. However, in view of my finding that the services in question do not meet the criteria of adjunctive dental care, this finding regarding preauthorization does not affect the ultimate decision in this appeal.

Prosthetic Devices

Under DoD 6010.8-R, Chapter IV, G.51, prostheses, except artificial limbs and eyes or items surgically inserted in the body as an integral part of a surgical procedure, are specifically excluded from CHAMPUS coverage. All dental prosthesis are excluded except those related to correction of a cleft palate anomaly. This exclusion of dental prosthesis, whether temporary or permanent, is also included in the regulatory provisions on adjunctive dental care. (See chapter IV, E.10.b.(3).)

The OCHAMPUS position at the hearing on this appeal assumed that the supplies (aqualizer and hydrostatically directed mandibular repositioning device) were excluded under the above authority. The Hearing Officer concluded the jaw repositioning appliance was not a splint or prosthesis excluded by the regulation. I agree. A prosthetic device is defined in DoD 6010.8-R, chapter II, B-145 as an artificial substitute for a missing body part. I find no substantial evidence in this appeal the appliances supplied the beneficiary were a substitute for a missing body part.

Therefore, I find the exclusion cited above inapplicable to the facts in this appeal. However, the supplies in this case cannot be covered under CHAMPUS because of the finding that the services do not meet the criteria of adjunctive dental care.

Coverage Under Oral Surgery

The appeal file reflects a suggestion that treatment herein of TMJ disturbance is within the intent of the oral surgery provisions of DoD 6010.8-R, chapter IV, E.10.d as a less extreme alternative. The CHAMPUS oral surgery benefit consists

of specifically listed procedures determined to be essentially medical care.

Surgical treatment of the temporomandibular joint has always been covered within the oral surgery guidelines either when disease is present, when surgery is a necessary part of a reduction of dislocations and excision of the temporomandibular joint, or under the CHAMPUS plastic/reconstructive surgery provisions when a severe skeletal deformity exists. Specifically, CHAMPUS coverage exists for surgical treatment involving the temporomandibular joint when the following conditions are present: osteoarthritis, rheumatoid arthritis, trauma, congenital causes (e.g., agenesis or hydroplastic condyle), ankylosis, tumors and dislocations.

While CHAMPUS covers surgical correction of intrinsic disease or deformity of the temporomandibular joint, CHAMPUS has not covered treatment of temporomandibular joint disturbance (TMJ Syndrome). By generally accepted definition, when the problem is the temporomandibular joint itself, the condition is not called TMJ Syndrome. Further, the symptoms commonly known as TMJ Syndrome are more frequently being referred to as Myofacial Pain Dysfunction in recognition that the joint itself is seldom the cause of the problem.

In view of the above, CHAMPUS coverage of surgical treatment of the temporomandibular joint does not extend coverage to treatment of temporomandibular joint syndrome through occlusal equilibration or restorative occlusal rehabilitation. As found earlier in this decision, the record does not indicate a skeletal deformity of the jaw, dislocation of the temporomandibular joint, nor the existence of temporomandibular joint disease. In addition, no oral surgery was actually performed in this case. Therefore, the oral surgical provisions of the Regulation are inapplicable to this appeal.

Payment by "Other Insurance" Companies

The appealing party's representative provided for the record a statement from Blue Cross/Blue Shield of Illinois indicating coverage of TMJ disturbance has been extended under certain health insurance policies. However, the particular treatment covered is not specified in the documentation provided for the record.

Regardless, CHAMPUS is a federal statutory benefits program operated pursuant to law and implementing regulations. While private insurance companies are free to contractually extend benefits without reference to enabling legislation, I am constrained to administer CHAMPUS according to statutory provisions, including various exclusions and limitations, and the intent of those provisions. Although CHAMPUS may take into

consideration the benefit structure of private insurance in its legislative and regulatory amendments, I must adjudicate CHAMPUS coverage solely on existing statutory and regulatory provisions.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the services and supplies provided February 16 - August 30, 1979, for the treatment of temporomandibular joint disturbance were dental in nature and do not qualify as covered adjunctive dental care under applicable law and regulation. Further, the services and supplies are not covered as adjunctive dental care as no preauthorization of the services and supplies were obtained. Therefore, the claims for the treatment of TMJ disturbance on the dates in issue and the appeal of the beneficiary are denied. This FINAL DECISION in no way implies the beneficiary did not require the dental care to relieve the temporomandibular joint disturbance. It only confirms that the dental care in dispute is not the type of care for which coverage is permitted by law and regulation. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.

John Beary

John F. Beary, III, M.D.
Acting Assistant Secretary