



ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

APR 8 1983

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

|           |   |                          |
|-----------|---|--------------------------|
| Appeal of | ) |                          |
|           | ) | OASD(HA) Case File 83-01 |
| Sponsor:  | ) |                          |
|           | ) | FINAL DECISION           |
| SSN:      | ) |                          |

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) case file 83-01 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the beneficiary. The appeal involves claims for physical therapy provided to the beneficiary in Italy from July 1979 through November 1979. Although physical therapy treatments continued after November 1979, no claims have been received by OCHAMPUSEUR. The amount in dispute for the physical therapy from July 1979 through November 1979 is approximately \$810.00.

The hearing file of record, the tape of oral testimony and argument presented at the hearing, the Hearing Officer's Recommended Decision and the Analysis and Recommendation of the Director, OCHAMPUS have been reviewed. It is the Hearing Officer's Recommended Decision that the claims for physical therapy received subsequent to July 30, 1979 be denied CHAMPUS coverage because the medical necessity of the care was not established on behalf of the appealing party. The Director, OCHAMPUS concurs with the Hearing Officer's Recommended Decision.

The Acting Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, concurs with the Hearing Officer's Recommended Decision to deny CHAMPUS coverage of the physical therapy received subsequent to July 30, 1979, and hereby adopts the Recommended Decision as the FINAL DECISION. The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) is therefore to deny CHAMPUS cost-sharing of the physical therapy services received after July 30, 1979, on the basis the medical necessity and reasonably anticipated results of such therapy were not established on behalf of the appealing party.

FACTUAL BACKGROUND

The beneficiary, at approximately 12 to 13 years of age, experienced a condition known as Dorsal Kyphosis and Lumbosacral

pain. She was treated in a  
in Pisa, Italy.

The facility's record of medical care reflects cast splints for rounded shoulders at age 13 and complaints of spinal pain since age 15. The pain is attributed to the mechanical blockage of posterior joints due to misposition of the spine. The prescription was for periodic manipulation of the spine followed by continuous gymnastics at home. In July of 1979, at age 20, she began physical therapy with \_\_\_\_\_, M.D., a specialist in orthopedic medicine and traumatology.

On July 31, 1979, a CHAMPUS claim was received by the Office of CHAMPUS for Europe (OCHAMPUSEUR) for treatment of a condition diagnosed as "Kyphosis, dorsal in strong structure with hypomotrophy [sic] of the shoulder girdle and of the vertebro-humeral extensor muscles." The claim involved 10 sessions of physical therapy from July 10 through July 30, 1979, and was paid by OCHAMPUSEUR on November 16, 1979. Three additional claims for 35 sessions of physical therapy from September 14, 1979 through November 19, 1979, were received by OCHAMPUSEUR on October 17, 1979, November 8, 1979, and December 4, 1979. Letters denying CHAMPUS coverage of these claims were issued by OCHAMPUSEUR on December 10, 1979 and January 24, 1979.

The beneficiary appealed the OCHAMPUSEUR denial. Enclosed with her appeal was the following statement from Dr. \_\_\_\_\_ :

"I certify that \_\_\_\_\_, 20 years old, presents a clinical phenomemon of persistent Spondylalgia for the presence of severe Kyphosis [sic] with processes of vertebral structure. In September, 1979, the patient had already undergone re-educative therapeutic sessions of the spine in toto (Kinesitherapy, manutherapy, physical therapy, vertebral manipulations, thermotherapy, etc.) with notable improvement of the static and of the vetebraal dynamic. It is therefore opportune that she continue to undergo the same therapy.

I foresee a necessary period of another 9 months (for an entire period of 12 months: for September 1979 through September, 1980)."

At the OCHAMPUSEUR Reconsideration level of appeal, the case was reviewed by Surgical, Orthopedic, and physical therapy consultants. The consultants confirmed the diagnosis of Kyphosis (i.e., curvature was about 50°, with anything over 40° considered Kyphosis). However, the consultants found a stable condition with no acute, on-going disease process. As described, physical therapy was to relieve pain and discomfort with no affect on disease process. The physical therapy consultant noted that the normal course of physical therapy never exceeds two weeks and

questioned the proposed nine months to one year program. The OCHAMPUSEUR Reconsideration Decision affirmed the initial claims denial on the basis that the physical therapy exceeded the authorized benefits set forth in the CHAMPUS regulation.

The decision was then appealed to OCHAMPUS. Included with the appeal was a medical statement of the attending physician supporting the continued physical therapy. Dr. [redacted] statement described the patient as "affected by severe Kyphosis strongly painful at passive mobilization and at prolonged load." In addition, Dr. [redacted] identified a "state of [Lumbosacral pain], accentuated by lumbar lordosis increased by the dorsal situation." Dr. [redacted] advised of "marked improvement of the static and the dynamic of vertebral column in toto . . . with the disappearance of the painful symptomatology" resulting from the therapy. Dr. [redacted] recommended continued therapy in view of the patient's young age "to obtain further improvement either of the rachidial morphology or the [almost] total disappearance of the subjective symptoms."

The OCHAMPUS First Level Review Decision affirmed the previous denials of the physical therapy as a CHAMPUS benefit. The basis for the decision was that the patient's condition did not meet the CHAMPUS regulation criteria for physical therapy benefits.

At the request of the beneficiary, a hearing was held on April 21, 1981, at Pisa, Italy before [redacted], Hearing Officer. 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 FINDING OF FACT

##### Physical Therapy

As set forth in the Hearing Officer's Recommended Decision, the Department of Defense Regulation implementing CHAMPUS, DoD 6010.8-R, states the conditions under which physical therapy is a CHAMPUS benefit. Section C.3.j., chapter IV, DoD 6010.8-R, states, in part:

"To be covered, physical therapy must be related to a covered condition. (1) Outpatient therapy is generally limited to a sixty (60) day period, two (2) physical therapy sessions per week, in connection with each medical condition. In order for CHAMPUS benefits to be extended for physical therapy rendered for a longer period of time than sixty (60) days, and/or for more than two (2) sessions per week, requires submission by the attending physician of documentation as to medical necessity and the reasonably anticipated results of such therapy.

(2) General exercise programs are not covered even if recommended by a physician. Passive exercises and/or range of motion exercises are not covered except when prescribed by a physician as an integral part of a comprehensive program of physical therapy."

These guidelines, however, must be read in conjunction with the restriction imposed by the Department of Defense Appropriation Act, 1979, (Public Law 95-457) and all subsequent Acts, that all services and supplies cost-shared by CHAMPUS must be medically or psychologically necessary in the diagnosis or treatment of a physical illness, injury or bodily malfunction. Therefore, even though physical therapy is generally covered by CHAMPUS up to "a sixty (60) day period, two (2) physical therapy sessions per week", all physical therapy must be established as medically necessary to be cost-shared.

Applying the above cited criteria to the record in this appeal, the primary issue is whether any of the physical therapy was medically necessary in the treatment of the beneficiary's medical condition.

The beneficiary suffers from Dorsal Kyphosis, or curvature of the spine. The beneficiary, her mother, and the attending physician, Dr. \_\_\_\_\_, all testified at the hearing concerning her condition and therapy. It was their testimony that corrective gymnastics performed at home by the beneficiary between the ages of 15 and 19 resulted in no improvement in her condition. When she commenced therapy with Dr. \_\_\_\_\_ in July of 1979, she was in constant pain and could not stand erectly. After the initial therapy sessions, the beneficiary was able to go for periods of time without pain and her posture improved.

Dr. \_\_\_\_\_ described his treatment of Manu-Medicine as consisting of medication, physical therapy of the spine, muscle therapy and forms of therapy followed by active mobilization and then passive physical therapy. Dr. \_\_\_\_\_ testified that initially the pain decreased, but was difficult to treat due to the deformity of the beneficiary's spine. He further testified that the condition will never disappear, but considering the patient's age, improvement can be achieved if progressively treated over a period of time. Physical therapy can stop the pain and lessen the severity of the curvature.

Prior to the hearing, the case file was reviewed by the CHAMPUS medical consultants, the Colorado Foundation for Medical Care. In the opinions of the orthopedic surgeon and internist who reviewed the file, "Kyphosis is rarely a painful condition and does not usually respond to manipulation or active exercise. This condition does respond to the use of a brace, and in rare instances of severe progressive deformity surgical intervention may be helpful. But in general, exercises and manipulations would be of no benefit." As specifically concerned the treatment

received by the beneficiary, the medical consultants opined that "the documentation does not indicate the medical necessity [for any physical therapy]."

In considering all of the evidence of record, the Hearing Officer gave considerable weight to the testimony of the witnesses concerning the medical necessity of the initial treatment during July of 1979. In view of the Hearing Officer's ability to assess the demeanor of the witnesses during the testimony, I am adopting the recommendation concerning their credibility. While Kyphosis may not always be a painful condition, the credible testimony is that this case did include painful symptomatology resulting in functional disability. The initial physical therapy during July of 1979 was, therefore, medically necessary as maintenance physical therapy; i.e., required to retard or minimize muscular deterioration in patients suffering from a chronic condition.

Generally, maintenance physical therapy requires physician or physical therapist involvement only in the establishment of the therapy regimen, after which the therapy can be done by any reasonably instructed individual without the services of the physician or therapist. CHAMPUS, therefore, will cost-share as medically necessary care only the physician's or therapist's services in establishing the maintenance physical therapy regimen.

However, all physical therapy under CHAMPUS is subject to the limitations set forth in Section C.3.j., Chapter IV, DoD 6010.3-R. As cited above, that provision generally limits CHAMPUS coverage of physical therapy to a 60 day period, 2 physical therapy sessions per week unless the attending physician documents the medical necessity and reasonably anticipated results of therapy sessions in excess of the general limits.

In this case, the Hearing Officer concluded that credible testimony of the witnesses, especially the attending physician, established the medical necessity for ten sessions (rather than the general limit of six sessions) of physical therapy from July 10 through July 30, 1979. It was the Hearing Officer's recommendation that, given the pain involved, all ten sessions were medically necessary in establishing the physical therapy regimen. I adopt the Hearing Officer's finding as concerns the medical necessity of all ten sessions of the initial physical therapy.

As concerns the physical therapy sessions subsequent to July 30, 1979, no documentation of record exists to establish the medical necessity or the reasonably anticipated results of such therapy. All medical consultants reviewing this case questioned continuation of the physical therapy after the initial sessions. Even the testimony of the witnesses at the hearing failed to convince the Hearing Officer of the medical necessity for the continued therapy. The Hearing Officer found that the record was void of documentation required by the Regulation as to medical

necessity of the continued therapy. Specifically, the record should have included:

- ° Physician Certification of Treatment Plan. The plan should contain definitive information concerning the degree of functional impairment; the date, if possible, of onset of impairment; the type, frequency, and estimated length of time of therapy required; and the expected treatment results or goals.
- ° Therapist's Evaluation Report. Each claim should be accompanied by an evaluation report summarizing the patient's progress and documenting the physician's evaluation of the patient's current status.
- ° Modality of Therapy. All claims must itemize the specific modalities or procedures performed.
- ° Discharge Summary. Consistent with accepted medical practice, a discharge summary from the patient's medical file completed at the time active treatment is discontinued.

Although the documentation was inadequate for the initial therapy sessions, testimony at the hearing adequately supplemented the record. However, the testimony did not support the medical necessity of physical therapy subsequent to July 30, 1979. Specifically, the Hearing Officer opined that based on the physician's testimony, it would be impossible to present a thorough and complete treatment plan. The physician testified that it is impossible for him to determine the length of time for which therapy may be required or the reasonable results of such therapy. The physician's main goal was to eliminate pain and to maintain the patient's current status. The patient's age limited the physician's expectation for much improvement.

Based on the medical records and the hearing testimony, I concur with the Hearing officer's findings and determine the physical therapy provided subsequent to July 30, 1979 was not an authorized CHAMPUS benefit. The medical necessity and the reasonably anticipated results of the therapy were not established by or on behalf of the appealing party.

#### Standard of Care

An ancillary issue raised during the appeal involved the application of American medical care standards to care received in Italy in accordance with Italian medical standards. As stated by the Hearing Officer, CHAMPUS is a benefit program established for the retired members and dependents of members and retired members of the Uniformed Services of the United States. Even though some beneficiaries may live in or be citizens of foreign countries, the program is administered under the laws of the United States.

In implementing the laws governing the CHAMPUS, DoD Regulation 6010.8-R, limits authorized care to "appropriate medical care" defined in chapter II, section B.14, as "...medical services performed... in keeping with the generally acceptable norm for medical practice in the United States." In turn, the Regulation requirements are applicable in the United States and "all foreign countries unless specific exemptions are granted in writing by the Director, OCHAMPUS (or a designee)." (DoD 6010.8-R, chapter I, Section B.1.)

No exemption has been granted in this case or in general regarding the application "of the generally acceptable norm for medical practice in the United States" as regards physical therapy received in foreign countries. For that reason, I determine that the generally accepted norm for medical practice in the United States to be the correct standard for reviewing the CHAMPUS claims involved in this case.

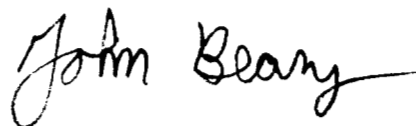
#### Unreasonable Delay in Denying Claims

The appealing party contends that OCHAMPUSEUR unreasonably delayed denial of the claims in this case. By this issue the appealing party attempts to raise the argument of estoppel against the Government; however, such argument is without merit.

Except for specific preauthorization cases as provided in the Regulation, CHAMPUS is an "at-risk" program whereby the beneficiary obtains care and submits an after-the-fact claim for processing by the Government or its fiscal intermediaries. A beneficiary is expected to be familiar with the law and regulation with regard to CHAMPUS coverage and exclusions and may not rely on a delayed response as approval of a claim. While treatment is a personal choice of the patient, a CHAMPUS claim must be allowed or denied based on the law and regulation.

#### SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the initial physical therapy received by the beneficiary for Dorsal Kyphosis from July 10 to July 30, 1979, was an authorized CHAMPUS benefit and that payment of the claim was correct. I further find that the physical therapy received subsequent to July 30, 1979 was not authorized CHAMPUS care. The Hearing File of Record, the tape of oral testimony and the argument presented at the hearing failed to establish the medical necessity and the reasonably anticipated results of the physical therapy after July 30, 1979. 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 F. Beary, III, M.D.  
Acting Assistant Secretary