



ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT  
SECRETARY OF DEFENSE (HEALTH AFFAIRS)  
UNITED STATES DEPARTMENT OF DEFENSE

AUG 23 1983

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) File 83-18
deceased	)	FINAL DECISION
	)	
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPVA Appeal OASD(HA) Case File 83-18 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is a beneficiary of the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA), as the widow of a deceased 100% disabled veteran. CHAMPVA is administered under the same or similar limitations as the medical care furnished certain beneficiaries of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). By agreement between the Administration, Veterans Administration, and the Secretary of Defense, pursuant to the provisions of Title 38, United States Code, Section 613, CHAMPVA claims are processed and appealed under rules and procedures established by the CHAMPUS regulation, DoD 6010.8-R.

The appeal involves the denial of CHAMPVA coverage for osteopathic manipulative therapy provided by a Doctor of Osteopathy from June 15, 1977, through May 1, 1981. The amount in dispute is approximately \$1,600.

The hearing file of record, the Hearing Officer's Recommended Decision, and the Analysis and Recommendation of the Director, OCHAMPUS have been reviewed. It is the Hearing Officer's recommendation that the OCHAMPUS First Level Appeal determination be upheld denying cost-sharing of the services. The Hearing Officer found the services were not medically necessary or appropriate medical care. The Director, OCHAMPUS concurs in the Recommended Decision and recommends its adoption as the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs). After due consideration of the appeal record, the Acting Assistant Secretary of Defense (Health Affairs) adopts the Hearing Officer's Recommended Decision to deny cost-sharing of the osteopathic manipulative therapy.

The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) is therefore to deny CHAMPVA cost-sharing of the osteopathic manipulative therapy provided June 15, 1977, through May 1, 1981. This decision is based on findings that the services were not medically necessary or appropriate medical care.

#### FACTUAL BACKGROUND

The beneficiary received osteopathic manipulation and diagnostic x-rays from \_\_\_\_\_, D.O., an osteopathic physician, during the period of June 15, 1977, through May 1, 1981. The diagnoses listed on the physician bills were: cervical vertebrae strain, radicular syndrome, displacement of intervertebral discs c 5/6 and c 6/7, and other anomalies of the spine. The attending physician, in statements for the appeal record, cites numerous conditions for which the beneficiary received treatment including a severe cervical whiplash strain suffered in an automobile accident in 1966, falls in 1977 and 1979, pneumonia in December 1978 - February 1979, a hiatal hernia in March 1979, acute myositis of the neck in March 1980, and flu in November 1980. The fall in 1977 resulted in a severe lumbo-sacral and hip muscle sprain which was also treated by an orthopedist from December 1977 to March 1978 with ultra-sound and diathermy treatments. The beneficiary indicated the therapy was also necessary for treatment of arthritis; however, the attending physician has denied treatment of the beneficiary for arthritis. During the period of June 15, 1977, through May 1, 1981, the beneficiary received osteopathic manipulative therapy on 76 occasions for which the billed charges total \$1,600. CHAMPVA claims were submitted at the time of the hearing for all charges except two visits on February 23 and May 1, 1981, involving charges of \$50.

CHAMPVA claims for the osteopathic treatments from June 15, 1977, through December 1978, were cost-shared by the fiscal intermediary. The claim for the period January through June 1979 in the amount of \$260 was denied. Informal Review and Reconsideration Review by the fiscal intermediary upheld the denial on the basis the documentation did not support the medical necessity of the continued physical therapy beyond 60 days. The beneficiary appealed to OCHAMPUS. In correspondence with OCHAMPUS, Dr. \_\_\_\_\_ advised of the distinction between physical therapy and osteopathic manipulation. OCHAMPUS conceded the denial of the claim under the physical therapy provisions was incorrect. OCHAMPUS review of the appeal, however, also resulted in denial of the claim based on the lack of documentation to justify the medical necessity of the treatment. Peer review by three physicians, with specialties in internal medicine, orthopedic surgery, and osteopathic medicine opined insufficient documentation was provided to consider the osteopathic manipulation as medically necessary or appropriate medical care in the absence of documentation of history or physical

examination, x-rays, other treatment recommended, or the need for continued treatment. The OCHAMPUS decision also found the entire episode of care from June 15, 1977, through June 11, 1979, (the period in issue at that time) had not been documented as medically necessary and payment by the fiscal intermediary was erroneous.

The beneficiary appealed and requested a hearing and submitted documentation of additional charges subsequent to June 1979. These charges for July through December 1979 and January through December 1980 were submitted with a new CHAMPUS claim dated May 21, 1981. As the charges for 1979 were apparently not submitted during 1979 or 1980, the timeliness of the claim for these charges is questionable. However, I have considered these charges in this decision as part of the episode of care for this beneficiary. The beneficiary also advised, as discussed above, of two additional visits during February and May 1981 for which no claim has been submitted. I have also included these visits in the period in issue for this appeal to fully advise the beneficiary on the status of her treatment.

The hearing in this appeal was held on September 30, 1981, in \_\_\_\_\_, New York, before \_\_\_\_\_, Hearing Officer. The Hearing Officer has submitted his Recommended Decision, and issuance of a FINAL DECISION is proper.

#### ISSUES AND FINDINGS OF FACT

The issues in this appeal are whether the osteopathic manipulative services provided June 15, 1977, through May 1, 1981, were medically necessary and appropriate medical care.

##### Medically Necessary Appropriate Medical Care

Under chapter 17, title 38, section 613, United States Code, the Administrator, Veterans Administration, is directed to provide for medical care, in the same or similar manner and subject to the same or similar limitations as CHAMPUS, for dependents of 100% service connected disabled veterans and dependents of deceased disabled veterans. Pursuant to this authority, the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) was established which by agreement is administered by the Department of Defense, Office of the Civilian Health and Medical Program of the Uniformed Services. CHAMPVA claims are processed and appealed under rules and procedures established by CHAMPUS regulation, DoD 6010.8-R.

Under DoD 6010.8-R, chapter IV.A.1., CHAMPVA will cost-share medically necessary services and supplies required in the diagnosis and treatment of illness or injury, subject to all applicable limitations and exclusions of the regulation.

Medically necessary services are defined in DoD 6010.8-R, chapter II.B.104. as:

"The level of services and supplies (that is, frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury, including maternity care and well-baby care. Medically necessary includes concept of appropriate medical care."

Services that are not medically necessary are excluded from coverage. (See DoD 6010.8-R, chapter IV.G.1.)

Appropriate medical care is defined, in part, as:

"That medical care where the medical services performed in the treatment of a disease or injury, or in connection with an obstetrical case or well-baby care, are in keeping with the generally acceptable norm for medical practice in the United States."  
(DoD 6010.8-R, chapter II.B.14.a.)

Applying these authorities to this appeal, to constitute CHAMPVA covered services the osteopathic manipulation must qualify as treatment for a disease or illness as a generally acceptable norm for medical practice. The Hearing Officer found the treatments did not meet these qualifications, and I concur in his findings.

In reviewing the appeal record, I find little documentation on which to conclude the services over a four-year period were medically necessary. The attending physician apparently treated the beneficiary for a number of conditions from a whiplash injury to flu during this period. The osteopathic manipulation was initiated in 1977 as treatment for an injury sustained eleven years earlier in an automobile accident. The long interval between the injury and treatment herein does not lend support to the necessity of the treatment. The record also reveals the beneficiary suffered several falls resulting in back and hip injuries for which she received treatment from an orthopedist. However, Dr. [redacted] also lists these injuries as substantiating his continued treatment. As discussed above, OCHAMPUS obtained a peer review by physicians associated with the Colorado Foundation for Medical Care prior to its First Level Appeal determination. That peer review severely questioned the treatment based on the lack of documentation. OCHAMPUS had previously requested information pertaining to the care including treatment modalities, treatment goals, medical evaluations, for example. A chronological discussion of the conditions treated (i.e., falls, sprain, etc.) was all that was received from Dr. [redacted].

Prior to the hearing, OCHAMPUS again submitted the file with the most recent letter from the attending physician to the Colorado Foundation for Medical Care. The reviewing physicians, specialists in internal medicine and osteopathic medicine, opined the value of osteopathic manipulative treatment eleven years after an accident is doubtful. The reviewers also questioned resumption of treatment after a three month lapse when the beneficiary had received ultrasound and diathermy from an orthopedist, as well as the justification for the treatment for viral pneumonitis and hiatal hernia. Basically, the physicians found the documentation was insufficient to consider the osteopathic manipulation to be medically necessary and appropriate medical care. Referring back to the initial review, the documentation required for full evaluation of the treatment included x-ray reports, other treatment recommended, patient symptoms, and physical findings. The physician's progress notes were furnished at the hearing and reviewed by the Hearing Officer. I concur in his conclusion; the notes describe the beneficiary's complaints but do not produce conclusive evidence to justify the necessity or appropriateness of the treatment. The notes do not reveal any other treatment modalities were considered although the beneficiary's problems were diverse and do not indicate medication was considered or prescribed for the back or neck pain experienced by the beneficiary.

No other medical documentation was submitted in support of the appeal. As found by the Hearing Officer, the responsibility for perfecting a claim and the burden of producing evidence of sufficient weight to overcome the prior determination rest with the beneficiary, the appealing party herein. (See DoD 6010.8-R, chapter VII.B.4.; chapter X.F.16.i.)

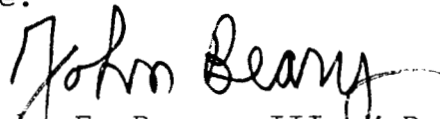
The Hearing Officer weighed the available evidence and determined the evidence presented by the beneficiary was not sufficient to override the evidence on which the prior determinations were made. The Hearing Officer gave substantial weight to the peer review opinion "particularly in view of the fact that one of the two reviewers is an osteopathic physician and has undoubtedly performed manipulative therapy himself."

I concur in this evaluation of the evidence. There is simply too little evidence of record justifying such a lengthy (4 years and 76 visits) treatment period particularly when initiated eleven years after the first injury. Continued treatment for a number of injuries and illnesses is highly questionable in view of treatment by other physicians and a complete absence of other treatment modalities and medication. The Hearing Officer found the treatment from June 15, 1977, to May 1, 1981, to be neither medically necessary nor appropriate medical care under DoD 6010.8-R. I adopt this finding and the Hearing Officer's recommendation to uphold the OCHAMPUS determination denying the CHAMPVA claims for manipulative therapy.

SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the osteopathic manipulative therapy provided June 15, 1977 through May 1, 1981, was not medically necessary and appropriate medical care. The claims and the appeal of the beneficiary are therefore denied. As the fiscal intermediary cost shared claims for this treatment, I additionally find those payments to be erroneous and direct that the Director, OCHAMPUS give appropriate consideration of recoupment action under the Federal Claims Collection Act.

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