ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

HEALTH AFFAIRS

JUN 11 1984

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) File 84-06
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-06 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party in this case is the beneficiary, the spouse of a retired officer in the United States Air Force. The appeal involves the denial of CHAMPUS cost-sharing for the April 1981 lease/purchase of an intermittent positive pressure breathing (IPPB) machine for treatment of chronic obstructive pulmonary disease. The lease/purchase price was $525.00.

The hearing file of record, the tape of oral testimony 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 recommendation that the OCHAMPUS First Level Appeal Decision be reversed and that the IPPB machine be cost-shared by CHAMPUS. The Hearing Officer found the IPPB machine was appropriate medical care. The Director, OCHAMPUS, nonconcurs and recommends rejection of the Recommended Decision and issuance of a FINAL DECISION by the Assistant Secretary of Defense (Health Affairs) denying cost-sharing of the equipment as not medically necessary nor appropriate medical care.

Under DoD 6010.8-R, chapter X, the Assistant Secretary of Defense (Health Affairs) may adopt or reject the Hearing Officer's Recommended Decision. In the case of rejection, a FINAL DECISION may be issued by the Assistant Secretary of Defense (Health Affairs) based on the appeal record.

After due consideration of the appeal record, the Assistant Secretary of Defense (Health Affairs) rejects the Hearing Officer's Recommended Decision. It is the finding of this office that the Recommended Decision does not reflect proper evaluation of the evidence in that the Hearing Officer disregarded medical documentation and authoritative medical opinions regarding the question of medical necessity/appropriate medical care for the use of the IPPB machine.

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is therefore to deny CHAMPUS cost-sharing of the lease/purchase of the IPPB machine. This decision is based on findings the use of the IPPB machine is not medically necessary/ appropriate medical care under the evidence in the hearing.

FACTUAL BACKGROUND

The beneficiary has been treated by Dr. Dinesh Kagal, a specialist in internal medicine and pulmonary disease, since May 1981 for a primary diagnosis of chronic obstructive pulmonary disease. Other diagnoses include asthma and emphysema. According to Dr. Kagal, the beneficiary is moderately well-controlled with a bronchodilator, cortisone treatments, and use of an intermittent positive pressure breathing (IPPB) machine at home. The IPPB machine was originally recommended by Dr. Robert L. McLeroy, the beneficiary's family physician. The IPPB machine was initially leased on April 22, 1981, at $65.00 per month but later purchased for $525.00. The treating physician reported that the beneficiary suffered episodic exacerbations of her condition requiring emergency room treatment involving the IPPB machine. Mucolytics to liquify thick sputum were also prescribed, and the beneficiary reports the at home use of the IPPB machine as often as 4-6 times per day for this purpose.

During the fall and winter, the beneficiary regularly used the IPPB machine 3 to 4 times daily for administration of bronchodilators. A pulmonary function test in March 1982 revealed moderately severe reduction in function and advanced asthmatic bronchitis. Dr. Kagal reports essentially no significant change in pulmonary function after use of the bronchodilator indicating an essentially nonreversible chronic obstructive airways disease.

A CHAMPUS claim dated May 24, 1981, was submitted by the beneficiary for cost-sharing of the IPPB machine in the amount of $525.00. The CHAMPUS Fiscal Intermediary for Texas, Wisconsin Physicians Service, denied cost-sharing of the IPPB machine and affirmed the denial upon appeal. The fiscal intermediary found the equipment was not documented as medically necessary. Additional documentation including pulmonary function tests, blood gas studies; and a narrative summary of recent hospitalization was requested but not furnished by the beneficiary for fiscal intermediary review.

The beneficiary appealed to OCHAMPUS. The OCHAMPUS First Level Appeal review affirmed the initial denial finding the IPPB machine was not medically necessary. Case review by the Colorado Foundation for Medical Care resulted in the opinion that complete clinical information and blood studies had not been furnished, and the record failed to document the need for the IPPB machine.

The beneficiary appealed and requested a hearing. The hearing was held on July 19, 1983, in Denton, Texas, before Harold H. Leeper, Hearing Officer. The Hearing Officer has issued his

Recommended Decision. All prior levels of administrative appeal have been exhausted and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issue in this appeal is whether the use of IPPB machine for treatment of chronic obstructive pulmonary disease was medically necessary/appropriate medical care.

Medical Necessity/Appropriate Medical Care

Under the Department of Defense regulation governing CHAMPUS, DoD 6010.8-R, chapter IV, A.1., CHAMPUS will cost-share medically necessary services. Medically necessary is defined as:

> ". . . the level of service and supplies (that is, frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury . . . . medically necessary includes concept of appropriate medical care." (Chapter II, B.104.)

Appropriate medical care is defined as:

> "a. 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;
>
> "b. The authorized individual professional provider rendering the medical care is qualified to perform such medical services by reason of his or her training and education and is licensed and/or certified by the state where the service is rendered or appropriate national organization or otherwise meets CHAMPUS standards; and
>
> "c. The medical environment in which the medical services are performed is at the level adequate to provide the required medical care." (Chapter II, B.14.)

Thus, to qualify for CHAMPUS coverage, the beneficiary's use of the IPPB machine must be adequate for treatment of chronic obstructive pulmonary disease and in keeping with the generally acceptable norm for medical practice.

The Hearing Officer found the use of the IPPB machine was appropriate medical care and recommended cost-sharing of the lease/purchase price. The Hearing Officer, in evaluating the evidence, concluded greater weight should be given to the opinions of the attending physicians rather than the opinions of

the medical reviewers. The rationale for this conclusion is based on the Hearing Officer's personal view that the opinion of the medical reviewers was based on medical information "which is rarely complete . . . furnished by physicians who are more interested in taking care of a patient than in writing letters to [her] insurance company." This rationale not only is contrary to the regulation burden of proof but also, taken to its logical conclusion, would call for greater weight to be given the opinion of the attending physician in proportion to absence of information for independent reviewing physicians. The fallaciousness of the rationale is evident.

The Hearing Officer also stated he was unable to locate any medical evidence in the record on whether the services are in keeping with the generally accepted norm for medical practice although he recited the medical literature directly pertaining to this issue. In addition, his evaluation of the evidence failed to discuss that evidence. Therefore, I find the Recommended Decision improperly applied the burden of proof to CHAMPUS, failed to consider relevant evidence, and is not supported by the evidence of record. I reject the Hearing Officer's Recommended Decision for these reasons.

In my review of the file, I find the great weight of medical opinion to be critical of the use of the IPPB machine in treatment of chronic obstructive pulmonary disease. An article entitled "Chronic Bronchitis, Bronchiectosis and Emphysema," John E. Hodgkin, M.D., Current Therapy, pages 102-109, (1981) states:

> "There is no scientific evidence that IPPB more effectively delivers bronchodilator medication more effectively than simpler aerosal devices in the usual patient with COPD. IPPB for medication administration should be considered only in patients who are unwilling to take or incapable of taking deep breaths spontaneously. In those patients with severe airway obstruction caused by a large amount of thick, tenacious secretions or severe bronchospasm, IPPB may help them inhale the bronchodilator more effectively than they can with spontaneous effect alone . . . . IPPB should be considered only for bronchodialtor aerosolization in those patients in whom less expensive devices have been shown to be unsuccessful." Id. at 102.

The Merck Manual (1982), a common medical reference text, is more critical of the IPPB machine in treatment of chronic obstructive pulmonary disease, stating:

> "Despite their wide use, IPPB machines have not been shown to improve the patients ability to raise secretions or to affect

> favorably the overall condition of ambulatory patients with COPD." Id. at 635.

In the 1983 Edition of Current Therapy, an article entitled "Chronic Bronchitis, Bronchiectosis, and Emphysema," Paul A. Easton, M.D., and Nicholas R. Anthonisen, M.D., page 90 emphatically states:

> "With proper patient education, the usual metered dose, disposable, hand-held nebulizer is an effective aerosal delivery system. 'Wet,' compressor-driven nebulizers may deliver the medication in a slightly higher dose over a longer period, but these are not necessary for outpatients. There is no evidence at this time that justifies the use of intermittent positive-pressure breathing (IPPB) as a bronchodilator delivery system."

The hand-held nebulizer is also listed as an available method of aerosolization of bronchodilators in the 1981 edition of Current Therapy.

OCHAMPUS obtained three case review opinions from specialists in internal medicine and pulmonary disease. The reviewing physicians, in each instance, opined the medical necessity of the IPPB machine had not been documented. The reviewers stated that use of the IPPB machines has not been shown to improve the ability to raise bronchial secretions and generally does not improve the clinical condition of the chronic obstructive pulmonary disease (COPD) patient. Use in acute exacerbations might be justified to aid in management of secretions and bronchospasm. The physicians noted the pulmonary function test showed no significant change after use of a bronchodilator and that during an emergency room visit in October 1981 (cited as justification for the IPPB), the beneficiary was receiving Lopressor, a beta blocking agent not recommended for patients with bronchospastic diseases. The reviewers questioned whether this drug could be a cause of the patient's shortness of breath. The drug was subsequently eliminated from the patient's treatment although the date is not known.

Based on review of these authoritative opinions, I conclude an IPPB machine is not the recommended method of either administration of bronchodilator medication or management of secretions particularly in the absence of evidence other methods have proved unsuccessful. The facts in this appeal do not reach even the most favorable of these opinions. The pulmonary function test revealed, in the opinion of the attending physician, an essentially nonreversible chronic obstructive disease not responding to a bronchodilator. This evidence indicates a bronchodilator, regardless of the method of administration, was not effective treatment for this beneficiary, thereby eliminating one cited justification for the IPPB machine. Further, as noted above, authoritative medical texts have challenged the use of the IPPB machine in improving secretions, another need cited by the beneficiary in justifying the IPPB

machine. The attending physician stated for the record the beneficiary received mucolytic agents by IPPB machine. The 1981 edition of Current Therapy criticizes this treatment as little scientific evidence is available to support this modality according to the author. Some justification might have been indicated in this appeal if the beneficiary could not take deep breaths spontaneously; however, there is no evidence of this in the record.

Finally, at the hearing, the beneficiary revealed she was then (July 1983) using a hand-held device for aerosolization of bronchodilators. According to the beneficiary, she was not aware this method was available in 1981 and her physician did not advise her it was available. However, the medical literature of record in this appeal clearly indicates metered dosage cartidge inhalers and hand-bulb nebulizers were available in 1981. Apparently, the beneficiary is presently using one of these methods and no longer relies on the IPPB machine for regular treatment. No explanation has been given by the physician as to why one of these methods was not initially utilized. The present use of the hand-held devices would appear to negate the earlier use of the IPPB machine considering the progressive nature of the beneficiary's disease.

I find, therefore, that the use of an IPPB machine is not the preferred method of treatment of COPD in the most liberal of the opinions of record and not a proven modality in the more critical opinions. Under adoption of either standards, I find the use of the IPPB machine was not medically necessary nor appropriate medical care for this beneficiary. The evidence does not establish the beneficiary was treated unsuccessfully with hand-held aerosal therapy; indeed, she is being currently treated with that modality. Further, the use of a bronchodilator is questionable in view of the pulmonary function test, and the IPPB use for improving secretions is questionable particularly in absence of evidence the beneficiary was incapable of taking deep breaths. Therefore, I must decline CHAMPUS cost-sharing of the lease/purchase price of the IPPB machine in this appeal.

SUMMARY

In summary, it is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) that the lease/purchase of an IPPB machine in treatment of chronic obstructive pulmonary disease was not medically necessary nor appropriate medical care. Therefore, the claim for cost-sharing of the lease/purchase and the appeal of the beneficiary are denied. Issuance of the FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.

William Mayer, M.D.

84-06

RECOMMENDED DECISION

Claim for CHAMPUS Benefits

Civilian Health and Medical Benefits Program of the

Uniformed Services

--Beneficiary

--Sponsor

SSN

This case is before the undersigned Hearing Officer pursuant to the Appealing Party's request for hearing dated September 28, 1983, which apparently was intended to have been dated September 28, 1982, as the OCHAMPUS First Level Appeal Decision was dated August 26, 1982. The Beneficiary's claim for approximately $525 for the lease/purchase of an intermittent positive pressure breathing machine (IPPB) was denied for the reason that such treatments were considered not to be medically necessary for the diagnosed medical condition of the Beneficiary.

The Fiscal Intermediary had found, and OCHAMPUS concurred in that finding, that the use of an IPPB machine in the beneficiary's home was not justified at the time, and thus was not a covered benefit under the CHAMPUS Program.

The hearing was held pursuant to Regulation DoD 6010.8-R, Civilian Health and Medical Program of the Uniformed Services. Chapter X, Section F, Paragraph 4, in Denton, Texas on July 19, 1983. [redacted] was present and was accompanied by her husband and sponsor. OCHAMPUS was represented by Gerald A. Wesley, Esq., Assistant General Counsel.

ISSUES

The general issue before the Hearing Officer is whether the Beneficiary's lease/purchase of an IPPB machine in April 1981 may be cost-shared by the CHAMPUS Program. The specific issue to be decided is whether the lease/purchase of an IPPB machine was medically necessary, as the term is defined by the Regulation, for [redacted] diagnosed illness of chronic obstructive pulmonary disease (COPD).

LAW AND REGULATIONS

Regulation DoD 6010.8-R is promulgated under the authority of, and in accordance with, Chapter 25, Title 10, United States Code.

The following citations from Regulation DoD 6010.8-R contained the relevant provisions of the CHAMPUS Regulation which must be considered in resolving the Issues in this Appeal:

Chapter IV, A.1 Scope of Benefits, provides that the "CHAMPUS Basic Program will pay for medically necessary services and supplies required in the diagnosis and treatment of illness or injury, including maternity care."

6. emphasized that the quotation contained in the Statement of OCHAMPUS' position, page 2, bottom paragraph, took the sentence "Granted she does not need treatments on a regular basis at this time," out of context, and referred to the rest of the paragraph "with Fall and Winter approaching, a time of increased need for this type of treatment, it is my opinion will need to again go on a 'regular' schedule." Dr. McLeroy had also said earlier in the paragraph that she continued to have episodic exacerbations of her COPD and asthma to the extent that she had to go to the local hospital emergency room to receive IPPB treatments.

7. She testified that a "normal" level of use was that she would try to use the machine every 4 hours, but when her condition became particularly severe, she would use it more often, but put less medicine in it, and only use it to assist in breathing, with a saline solution to prevent drying of the mucous membranes. Sometimes she would do it every 3 hours, and on more severe occasions would use it hourly.

8. As to her physical life-style at that time, she said she could not do her house work, and could not take a shower but had to sit to bathe. While traveling with her husband, they carried the machine with them at all times, and would often have to stop at a service station to plug it in in order to obtain relief for her. She never left home without the machine, and had it with her in their car at the time of the hearing. She said no one would buy a monstrosity of a machine like that unless it was absolutely necessary to preserve her life.

9. She said she went to the Denton emergency room 4 times before they bought the IPPB, and once to the emergency room in Garland, Texas after that.

10. When they bought the machine, she used it full-time for approximately 1 1/2 years; although it was generally used on a seasonal basis, it was not limited to any one or two seasons, and she used it at least once a day during the entire period of 1 1/2 years. After that, a new kind of inhaler was developed which Dr. McLeroy suggested that she try, but she was reluctant to use it without Dr. Kagal's approval; after Dr. Kagal reviewed her case again he approved her use of it, and it has been of great benefit to her in reducing the number of occasions on which the IPPB machine is necessary. This is particularly true when she is away from home on a short trip downtown. However, when they travel in a car with a travel trailer, they take the machine along, and must stop overnight where there is a 110-volt electrical hookup.

11. She concurred in the Hearing Officer's observation that she looked well at the time of the hearing, but said that could change tomorrow and she would need the machine to be able to breathe. Whenever they plan trips to Dallas they must avoid rush hour traffic, as the fumes from diesel trucks and other automobiles in heavy traffic requires her to use the machine so she can breathe.

12. She said without the IPPB she would have had to have gone to the emergency room much more often through the past several years, and emphasized that this would have required a great deal more expenditure of CHAMPUS and their personal funds for frequent emergency room treatments. She said she only uses the machine when she is not able to breathe without it.

13. said they feel very strongly that her two doctors, one of which is a lung specialist, are qualified to determine what she needed in the way of treatment and medical equipment, and that they had seen her many times

through the years, and were thus better able to determine her need for an IPPB machine than a physician who had never seen her. said this claim is a matter of principle with her, and she feels that her honesty has been called to question.

14. After the hearing, furnished statements from Drs. McLeroy and Kagal, in support of her claim for cost-sharing of the IPPB. Dr. McLeroy's letter dated July 26, 1983 (Exhibit 32) refers to her "moderate to severe COPD" and said her condition necessitated her continued and very frequent use and need for IPPB treatment between April '81 and March '82, and mentioned one examination which evidenced "life-threatening lack of oxygen availability" He enclosed an April 1981 pulmonary function study, which was taken on a "relatively good day," and also enclosed copies of blood gases (arterial) taken on one of the many times she was seen in the emergency room. He expressed the opinion that would have been in decided respiratory jeopardy without the IPPB machine constantly on hand from April 1981 to March 1982.

Dr. Kagal's letter was less detailed, but equally clear. He said he prescribed IPPB treatment as she was in "severe respiratory difficulty with Asthmatic Bronchitis" and was unable to breathe effectively. He said she used the machine on a regular basis up to 4 to 6 times a day and said she could be treated effectively at home, to prevent her from being hospitalized.

Evidence Furnished by OCHAMPUS

1. On May 21, 1981 Dr. McLeroy issued a prescription to acquire an IPPB machine and it was procured from the Medical Mart for $525. May 22, 1981 the purchase was changed to $65.00 a month rental.

2. The publication Current Therapy 1981 edition states, "There is no scientific evidence that IPPB more effectively delivers bronchodilator medication than a simpler aerosol device in the usual patient with COPD. IPPB for medication administration should be considered only in patients who are unwilling to take or incapable of taking deep breaths spontaneously. . . ."

3. Exhibit 7 the Fiscal Intermediary denied the claim based on available information, and found the IPPB not medically necessary for the Beneficiary's diagnosis of emphysema.

4. Exhibit 8, the Fiscal Intermediary reconsidered and affirmed, based on the opinion of its medical advisors as to a diagnosis of emphysema.

5. Exhibit 9, a copy of the Gainesville hospital emergency room form dated October 31, 1981, for use of an IPPB machine, among other things, a total of $108.25.

6. Exhibit 9, page 2 a letter from Dinesh P. Kagal, M.D. MRCP a specialist in internal medicine and pulmonary disease, certifying that he was treating and she has "moderate to severe COPD." Copies of her PFT were enclosed, stating that "the IPPB machine is necessary for her treatment recommended by me to improve her breathing. This is medically necessary for her treatment."

7. Exhibit 15, Pulmonary function tests made on 4-20-81.

8. Gainesville Hospital Emergency Room Record, same as Exhibit 9, Item 5 above.

9. A peer review from the Colorado Foundation for Medical care, Exhibit 22-A reviewer noted that the emergency room records that the patient was taking Lopressor, which is not recommended for patients with bronchospastic diseases, and wondered whether this might be the cause factor with her complaints of shortness of breath. The reviewer found that the documentation showed the primary diagnosis as "moderate to severe COPD" and expressed the opinion that "such a diagnosis is not to be considered a justification for use of an IPPB machine on a continuous basis. With COPD, IPPB may be justified in acute exerbation (sic) of pulmonary disease to aid in the management of secretions and bronchospasm. In short, the documentation on this case does not warrant use of IPPB." This conclusion was based on the lack of information in the record documenting the need for IPPB under established criteria, which were not given by the reviewer. Apparently he was concerned with the use of Lopressor," which was not explained in the record."

10. After the First Level Appeal denial, the beneficiary furnished additional documentation, including: 1) a letter from Dr. Kagal, dated September 22, 1982 which is quoted in full: " has been under my care since May of 1981, for the treatment of Chronic Obstructive Pulmonary Disease. Predominantly Asthmatic Bronchitis in nature. She has been moderately well controlled with the use of a bronchodilator intermittent and cortisone treatment and intermittent and positive pressure breathing treatments at home. Patient obtains a great relief both in relieving her bronchospasm as well as liquefying secretions for the use of bronchiodilators and mucolytic agents mixed with saline during the treatments. These treatments have on many occasions have prevented her from coming to the emergency room or even have prevented her hospital admissions, especially during fall and winter seasons. I feel strongly that patient has definitely benefited from these treatments and especially with approaching Fall and Winter, she would require such treatments more frequently. Blood gases that were done during periods of acute exacerbation have shown significant amount of arterial Hypoxemia with associated ventilation perfusion in quality and rule out hyperventilation which has improved with the IPPB treatments in the past.

I hope this satisfies your department for the need of continued use of her IPPB machine for . If you need any further information about the patient, I will be happy to provide you with any further details."

11. Also furnished was a letter from Dr. McLeroy dated September 9, 1982, furnishing additional information to explain the need for an IPPB machine. He pointed out that stopped using Lopressor but continued to have episodic exacerbations of her COPD and asthma to the extent that she has had to go to the local hospital emergency room to receive IPPB treatments. Granted she does not need treatments on a regular basis at this time, but the machine use with mucolytics and bronchial anti-spastic agents was prescribed on a regular basis (tid to quid) until such a time when her condition improved to the point of a prn basis. With fall and winter approaching, a time of increased need for this type of treatment, it is my opinion, will need to again go on a 'regular' schedule." He furnished a blood gas analysis dated September 7, 1982. Also furnished was a pulmonary function test signed by Dr. Kagal, indicating "fairly advanced asthmatic bronchitis."

12. In Exhibit 28, Robert E. Beck, M.D. and James T. Good, Jr. M.D. a specialist in pulmonary diseases and internal medicine, stated "neither COPD nor asthma is an indication for the use of IPPB according to established criteria." They found

the primary diagnosis as COPD "of a moderate to moderately severe nature" and expressed the medical opinion that "neither COPD nor asthma are indications for IPPB use routinely. There are other and better ways to treat the patient's condition on a routine basis, plus we noted on the pulmonary function test there was no significant change in pulmonary functions values after use of a bronchodilator. We would not consider routine home use of IPPB medically necessary in this patient's case."

13. After reviewing the contents of these most recent letters from the Claimant's treating physicians, the reviewer for the Colorado Foundation, in Exhibit 34, again found that the use of the IPPB machine was not medically necessary to treat the patient's condition. He said, "Despite the letters from Dr. Kagal 8/2/83 and Dr. McLeroy dated 7/26/83, the use of IPPB machines is not medically necessary and appropriate in the treatment of chronic obstructive pulmonary disease. The use of IPPB machines have not been shown to improve ability to aid bronchial secretions and they generally do not improve the clinical condition of the COPD patient. Again it is noted from the pulmonary function test dated 3/29/82 that the use of the bronchodilator had no significant change in pulmonary functions.

EVALUATION OF THE EVIDENCE

In this case we have a not uncommon situation where the opinions of medical specialists are conflicting. On the one hand we have the opinions of two physicians who had examined and treated over a period of several years, and had seen her in good days and bad, in the hospital emergency room and their offices, and who have the professional responsibility for treating her and maintaining her health to the maximum possible extent. Both of these men prescribed an IPPB machine on a full-time basis, to be kept in her home so it could be used whenever needed, and they recognized that the number of uses per day fluctuate depending on her condition and the time of the year, but also recognized that there would be times when she would have to use it as many as 4 times a day, and permitted her to do so oftener, when she would not use the medication but would use it with a saline solution, to assist her in the physical act of breathing.

Supplementing the professional medical opinions of Drs. Kagal and McLeroy we have the credible and pursuasive testimony of both and ., to the effect that she would not have been able to have continued to live if it had not been for the IPPB machine at the time they acquired it. There is strong reason to believe that if she had not had the IPPB machine with her at all times, her visits to the hospital emergency room would have been very frequent, possibly on a daily basis at certain times of the year. Considering the cost of hospital room visits, $180 on 10/31/81 it is difficult to ascertain any economies to be obtained by denying her the use of an IPPB machine at home, when 5 visits to the emergency room would more than offset the cost thereof.

On the other hand we have the professional judgment of two impartial physicians, who are regularly engaged in evaluating medical records, but whose only information about was what was contained in the files which had been submitted first to the fiscal intermediary then to OCHAMPUS, with the two additional letters from the treating physicians. It must be recognized that neither of these physicians ever saw , nor did either of them have any professional responsibility for her treatment or continued well-being.

Thus we have a classic case of an opinion from an impartial and disinterested professional person, based on medical information which is rarely complete, which had been furnished by physicians who are more interested in taking care of a patient than in writing letters to his insurance company. On the other hand, there are the opinions of two professional persons, arguably equally well qualified professionally, who have seen dozens of times, know of her physical problems and the distress that requires her to have a doctor-patient relationship for her well-being.

It is difficult for this Hearing Officer to accord the opinion of a disinterested but relatively uninformed physician greater weight than that of an equally qualified physician who has infinitely more information about the patient and feels a sense of responsibility for her well-being.

Accordingly, it must be concluded that the opinions of Drs. Kagal and McLeroy are entitled to greater weight than those of Drs. Beck and Wood, as to what constituted appropriate medical care for this particular woman. Although the issue of whether these services were in keeping with the generally accepted norms for medical practice in the United States was raised at the hearing for the first time, this Hearing Officer is unable to locate any medical evidence in the record which bears on this question.

RATIONALE

It is clear that the DoD Regulation 6010.8R, which is based on the provisions of the statute authorizing the CHAMPUS Program, does not authorize CHAMPUS cost-sharing payments for the purchase or acquisition on a lease/option basis IPPB machine for use in the home, unless that equipment and treatment therefrom is medically necessary for the treatment of the beneficiary's illness.

In this case, however, based on the Hearing Officer's analysis of the evidence in the record, as discussed above, it must be concluded that the Appealing Party has met her burden of proving by substantial evidence that the Use of an IPPB machine on a full-time basis for use in her home and when traveling in an automobile away from home, was medically necessary for her illness of asthma and chronic obstructive pulmonary disease, which is shown by the medical and lay evidence as being sufficiently serious as to require the availability of breathing equipment 24 hours a day, seven days a week.

In sum, has established by substantial, pursuasive evidence that an IPPB machine was appropriate medical care for the nature of her illness in 1981 and 1982. Thus it must be concluded that the First Level Appeal decision of OCHAMPUS dated August 26, 1982 was incorrect, and should be reversed.

FINDINGS

The undersigned Hearing Officer makes the following findings of fact:

1. filed a request for hearing dated October 4, 1982, challenging the determination of OCHAMPUS that the purchase or lease/purchase of an IPPB machine was not covered by the OCHAMPUS Program.

2. Documents and testimony in the records of this proceeding establish that the First Level Appeal decision of OCHAMPUS was incorrect, because the use

of an IPPB machine by .. in 1981 and 1982 was appropriate medical care for her diagnosed conditions of chronic obstructive pulmonary disease and asthma, requiring the availability of breathing assistance equipment on an around-the-clock basis.

3. The purchase or lease or lease/purchase by . of an IPPB machine in 1981 was eligible for CHAMPUS cost-sharing.

RECOMMENDED DECISION

It is recommended by the undersigned Hearing Officer that the First Level Appeal decision of OCHAMPUS dated October 4, 1982 be reversed on the basis that it incorrectly denied the claim of the Appealing Party, since the purchase or lease/purchase of Intermittent Positive Pressure Breathing machine was appropriate medical care for at the time it was acquired by her. It is further recommended that the cost of the machine, either on a purchase or lease/purchase basis, be cost-shared by CHAMPUS.

Harold H. Leeper

Dallas, Texas
December 27, 1983

Harold H. Leeper
Hearing Officer