ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

HEALTH AFFAIRS

JUL 30 1984

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) FILE 83-48
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 83-48 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party is the spouse of a retired member of the United States Air Force. The appeal involves the denial of CHAMPUS coverage of prescription drugs ($608.16) provided the beneficiary from March 17, 1981, through December 11, 1981. Prior to the hearing, the appeal was expanded to include the question of CHAMPUS coverage of prescription drugs provided the beneficiary from January 1, 1978, to March 16, 1981. The primary issues involved are whether the prescription drugs were medically necessary and appropriate in the treatment of the beneficiary and whether the prescription drugs were related to a drug abuse situation.

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 denial of CHAMPUS cost-sharing for the prescription drugs from March 17, 1981, through December 11, 1981, be upheld. The Hearing Officer's recommendation is based on findings that the beneficiary was in a chemical dependent state and that treatment of the beneficiary with the prescription drugs was not medically necessary nor within the acceptable norm for practice within the United States. The Hearing Officer also recommended that the beneficiary's claims for prescription drugs for the period of January 1, 1978, through March 16, 1981, be considered to have been erroneously cost-shared under CHAMPUS. This recommendation is based on findings that the prescription drugs were related to a drug abuse situation. The Director, OCHAMPUS, agrees with the Hearing Officer's Recommended Decision and recommends its adoption as the FINAL DECISION.

The Acting Principal Deputy Assistant Secretary of Defense (Health Affairs), acting as the authorized designee for the Assistant Secretary, after due consideration of the appeal record, agrees with recommendations of the Hearing Officer and Director, OCHAMPUS, to deny CHAMPUS coverage of the prescription drugs provided the beneficiary from January 1, 1978, through December 11, 1981, and adopts the recommendations as the FINAL DECISION.

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to deny CHAMPUS cost-sharing of the beneficiary's prescription drugs from January 1, 1978, through December 11, 1981. This decision is based on findings that the prescription drugs provided the beneficiary were not medically necessary and were not appropriate care in that the prescription of controlled substances, to which the beneficiary was addicted, was not in keeping with the generally accepted norm for medical practice in the United States.

FACTUAL BACKGROUND

The beneficiary indicates that in 1978 she suffered from severe pain in her right hip. When her right knee became swollen, she went to the hospital emergency room for tests and x-rays. She was later referred to a physician who indicated that she had a torn ligament in her right groin and osteoarthritis in her right hip, right knee, and right thumb. This physician placed the beneficiary on Percodan and Valium to enable the beneficiary to cope with the pain and to function in a somewhat normal manner. The beneficiary indicates that she remained with this physician until 1980 when she was referred to her present physician (a psychiatrist) because she required treatment for mental and emotional problems. The beneficiary states that she was under great stress, deep depression, and anxiety attacks due to the excruciating pain as a result of the osteoarthritis and torn ligament.

The beneficiary, while under the care of her first physician, was prescribed large amounts of Percodan and Valium to enable the beneficiary to ambulate. The beneficiary states that this physician did not advise her that the medication was addictive.

Her present physician continued to prescribe Valium and also prescribed Talwin. This physician prescribed sleeping pills to enable the beneficiary to sleep and Valium for anxiety attacks which the beneficiary gets as a result of stress. The beneficiary states that these drugs did not kill the pain; however, they did make it tolerable for the beneficiary to function. She also states that her present physician was trying to help her cut down on her medication and gradually reduce her addiction to Percodan.

The beneficiary, while under the care of her first physician, filed CHAMPUS claims for Valium and Percodan which were cost-shared by the CHAMPUS Fiscal Intermediary. While she was

under the care of her second physician, a CHAMPUS claim for drugs prescribed for the period March 17, 1981, through December 11, 1981, was denied by the CHAMPUS Fiscal Intermediary. The fiscal intermediary denied this claim because the beneficiary's use of seven to eight Valiums per day in addition to Talwin indicated that the beneficiary was being maintained in a drug dependent state. Accordingly on February 10, 1982, the beneficiary was advised that her claim for the prescription medications covering the period March 17, 1981, through December 11, 1981, was denied because the medications had not been documented to be medically necessary for the diagnosis and treatment of osteoarthritis and torn ligament.

The treating physician, by letter dated February 22, 1982, submitted additional information to the fiscal intermediary. This information indicated that the beneficiary was being treated by the physician for Dysthymic Disorder 300.4. This physician however, noted that the beneficiary's entire depressive condition also fell within the realm of a more inclusive set of conglomerate problems and symptoms. The physician indicated that he was attempting to treat this beneficiary in a holistically-oriented psychotherapeutic context which involved not only the traditional psychotherapeutic modalities of support, insight, and transference work, but also holistic modalities including relaxation, nutrition, exercise, and relaxation techniques of varying kinds related to all the modalities. This physician further stated the medications prescribed were prescribed in decreasing amounts in a weaning process.

The physician further stated that the beneficiary had several other official diagnoses falling within the realm of his expertise which were evaluated by other physicians as well as himself. These included Valium and Percodan addiction, osteoarthritis, radicular pain in the legs (secondary to the osteoarthritis), and varicosity in the left lower extremity. This physician indicated the beneficiary also had frequent bouts of disuria, a chronic urinary tract infection, chronic sinusitis, and various cardiac symptomatology which he opined were probably related to cardiac neurotic pneumonia.

After receiving this additional information, the fiscal intermediary referred the case file to its medical advisors for review. The medical advisor opined that these prescription drugs were not medically necessary for the diagnosis and/or treatment of the beneficiary's illnesses. The medical advisor stated that, based on the information contained in the record and the CHAMPUS guidelines, payment could not be authorized for the medications received from March 17, 1981, through December 11, 1981, because there was insufficient medical documentation justifying the continuous use of the medications prescribed.

The fiscal intermediary upheld the denial of the beneficiary's claim for prescription drugs and the beneficiary appealed to OCHAMPUS. The appeal included another letter from her treating physician in which he stated:

"First, the material in my February 22nd, 1982 letter to the Medical Review Department still stands and I would like to refer again to that material . . . by way of saying that I still feel that those reasons stated in that letter are clinically appropriate. It is also additionally important to understand that [the beneficiary] was prescribed the analgesic and tranquilizing medications (largely Percodan in full strength and large amounts of Valium) by her physicians . . . because of her severe and increasing chronic 'hip, groin, and joint pain' for which she was seeing the various physicians in order to get treatment. In her May 1980 hospitalization at the U.S. Air Force Hospital at Kirtland Air Force Base she had several diagnoses which were the final diagnoses from that hospital admission made by her doctor . . . including osteoarthritis of the knees and hips, latent syphilis FTA positive, radicular pain in the legs, 'probably secondary to the latent syphilis diagnosis,' varicosity and chronic urinary tract infection. It was also an official diagnosis made by [the military physician] at that time that her 'Valium and Percodan addiction' were 'resolved.' Subsequent to that hospitalization however, she returned to out-patient private physicians for various treatments including the continuance of her difficulties with her various pains which have been well documented by various physicians. She was again given tranquilizers and analgesics in amounts which over the long period of time that they were given and in the amounts that they were given would be considered excessive. I must point out however, that these were prescribed and that as you know, this is a common and unfortunately all too frequent circumstance. When she first began in treatment with me in 1981 she was being officially prescribed by her internist, these medications in extremely high amounts. Also it is significant to note that she had not had any psychiatric treatment nor had she had any coordination of her various treatment regimens which might have been beneficial in helping her to not be so dependent upon these very difficult medications. In no way do I mean this as a faulting or over criticism of other physicians or programs. Rather it is a reflection of the complexity and difficulty with which the kinds of problems medically

that [the beneficiary] does have are unfortunately all too often met within the modern medical treatment context. In other words, as you know, these are very difficult conditions to treat well. It is very significant also to point out that in no way, according to my review of the records and conversations with other physicians, had she ever been prescribed anti-depressant medication despite prior diagnosis of depressions which are amenable to such medications typically.

"With all of this in mind, I began the program of using anti-depressant medication and trying to coordinate her entire treatment program under one roof so to speak with the blessing and in fact encouragement of her other physician, Dr. Levin. Our entire treatment thrust is and has been to when possible wean [the beneficiary] from these medications to which she has become addicted as we are also helping her to resolve the various emotional and medical problems as much as is possible relating to the need for such medications and the dependency upon them. This is no easy job. I might say that progress is being made. [The beneficiary] is losing weight (and her obesity contributes markedly to the painful conditions of multi-etiology), she is beginning to conquer not only her depression which has mixed components of both an endogenous and reactive nature, but also the various susceptibility she has to her rather remarkably tumultous [sic] home life. The point that I am making is that her case is not an easy one, her condition is not an easy one, and the treatment in a holistic context for both her depression and the various physical ills resulting from it and causing it in part, is a very difficult treatment program and is a lengthy one of approximately one to three years duration. Progress is being made. I would not even be able to have [the beneficiary] present were I not to cooperate with what is admittedly and understandably her addiction problem and needs to some extent. In addition, [the beneficiary] does suffer a great deal of pain which so far as I can tell is based on rather well documented indications that there are organic causes as well as functional causes for such pain. For these two main reasons, i.e., once again, 1) that it is clinically and medically necessary

as many doctors have seen, and 2) because [the beneficiary's] compliance in the treatment program which is resulting in her improvement and which will result in the eventual (not too distant future - 3 to 6 months) removal of these medications on a more lasting basis, would not be there, I have participated in prescribing these medications with mixed feelings. I would also like to enclose a copy of a June 17th, 1982 letter to me from [a chiropractor] indicating that even from the point of view of a chiropractic physician [the beneficiary] has documentable problems of an organic nature relating to her chronic pain.

"So in conclusion, it is my medical opinion that these medications have been and continue to be necessary in what I can in good conscience consider a medically appropriate way. It is of course important that the goal is to remove her dependency on these medications but in such a way that there are real changes made in [the beneficiary's] attitude, approach to this whole series of dilemmas and medical problems that she has, and most importantly in her ability, both psychologically and medically, to be able to accomplish these goals, such that the transformation is lasting rather than fleeting. Of course I am referring to the fact that she has a greater chance of not returning to such a dependency if she makes strides in dealing with the causes that have lead [sic] to the emergence and evolution of such dependencies rather than if she simply is temporarily removed via the advantages of a strict structured setting from the addiction with no real changes made in the causes for the addiction and the behavior related to such addictions which as you know, arise from and within the addiction complex and personality itself. The bottom line, therefore, in my opinion, is, that [the beneficiary] is improving and has her chances increased of actually becoming more well and she is developing much more healthful alternative strategies on her own life over which she has control, and in my opinion the treatment regimen including the prescribing of these medications has been appropriate and helpful."

OCHAMPUS referred the case to the Colorado Foundation for Medical Care for medical review. The reviewing physicians opined that the beneficiary had a drug addiction problem and the medical necessity for continuing these drugs over the period of time in question had not been shown. In their opinion, it was not considered appropriate to continue to give addictive drugs to this beneficiary in view of her documented drug dependency. In addition, they opined the beneficiary was in a drug maintenance situation while the physicians were attempting to find a lasting solution to the beneficiary's problems. These reviewing physicians further stated the medical records indicate an actual and documented overuse of drugs. Finally, while giving credit to the attending physician for working with this beneficiary to get her off these medications, the medical reviewers opined that continued prescriptions of these addictive drugs for the length of time involved was not in keeping with the generally accepted norm for medical practice in the United States.

Based on the opinions of the reviewing physicians, the OCHAMPUS First Level Appeal Decision determined the prescription drugs provided the beneficiary were not medically necessary nor appropriate treatment. Accordingly, the beneficiary was informed that her prescription drugs are excluded from CHAMPUS coverage because these medications were not medically necessary nor in keeping with the generally accepted norm for medical practice in the United States.

The beneficiary appealed and requested a hearing. A hearing was held at Albuquerque, New Mexico, on May 25, 1983, by Sherman R. Bendalin, Hearing Officer. The beneficiary represented herself at the hearing.

The beneficiary testified concerning her injury and the treatment she received from the various physicians. She also provided the discharge summary from her most recent hospitalization (January 31, 1983, to March 11, 1983). This summary stated:

> "Reason for Admission - This was the second Vista Sandia Hospitalization for this 58-year-old married woman who has five children. She was hospitalized in 1968-69 for approximately six weeks . . . when the hospital was called Nazareth.
>
> "[The beneficiary] has been having an increasingly difficult time keeping her depressive symptoms under control in treatment, so that for the last three weeks or so prior to the admission she had been having increased difficulty sleeping, poor appetite, increased anxiety, and certain feelings of helplessness and doom. In addition, she had been increasing her usage of medication upon which she had been

chemically dependent as one of her responses to the increased family stresses, depressions, and anxiety symptoms. She was therefore hospitalized to prevent further deterioration in her status to a full-blown major depressive episode and also to reduce (and hopefully eliminate) her chemical dependencies.

"I had been treating [the beneficiary] since February of 1981, at which time she was considering hospitalization at Vista Sandia Hospital but instead was referred by her internist, Dr. Levin, to me for evaluation and treatment. I have been following her as an outpatient, treating her mostly for her chronic depressive condition and frequent marital and family stresses which complicate her status on a fairly regular basis . . . .

"She had been treated for many years by physicians at Kirtland and also in the medical community in Albuquerque for osteoarthritis in the knees and hips. She has been treated with a variety of medications upon which she has become quite dependent. She has increased her usage of these medications during this recent time of increased stress, a pattern which has actually been fairly typical for her on a once or twice a year basis for the last three or four years. It is important to note that in the last three or four months in general . . . she has been facing her dependency, bordering on addiction, to medications which she uses both for arthritis and to relieve the symptoms of her depressions. She has become, in a sense, desperate to do something about not only her depression but also these dependencies.

"[The beneficiary] had had a problem with Percodan dependency/addiction since approximately 1978 at which time she had seen Dr. Hurley who prescribed this medication for her in relationship to her arthritic hip pain. She had also been receiving medication injections of steroids and treatment for the arthritis at that time. One of my main treatment thrusts has been to emphasize treating her chronic depression which periodically flares to an acute extreme episode, and at the same time attempting to help her eliminate her prescription medication dependencies.

She had been hospitalized at Kirtland Air Force Base in May of 1980 with discharge diagnoses as follows: "Valium and Percodan addiction, resolved; osteoarthritis of the knees and hips; latent syphilis which was FTA positive (a diagnosis which needs further elucidation); anxiety and depression; radicular pain in the legs (probably secondary to the syphilis diagnosis); a resolved urinary tract infection; and lower left extremity mild varicosity."

* * * *

"The main essence of the present illness requiring hospitalization was that [the beneficiary] had been admitted to reduce her depression and hopefully eliminate it, and also to attack the chemical dependency status on an effective inpatient basis, which will be the first time that this has really been done in an acknowledged fashion by the patient and her family members.

* * * *

"ADMITTING DIAGNOSIS:
1. Dysthymic disorder, 300.4.
2. Dependence on a combination of substances, excluding opiodes and alcohol, 304.1.

"PHYSICAL EXAMINATION RESULTS:
Physical exam revealed the following problems; '1) dysthymic disorder, depressed; 2) drug abuse (Valium and Talwin); 3) probable osteoarthritis in the lumbosacral spine and right hip joint; 4) history of positive serology; 5) post vaginal hysterectomy status; and 6) rule out urinary tract infection.'

* * * *

"HOSPITAL COURSE:
The major identified clinical problem (by mistake) was limited to #8, drug abuse. There also should have been listed problem #30, depressive behavior.

"With respect to the drug abuse problem, she was put on a gradually diminishing scale of the Talwin and Valium until both the medications were reduced to 0 with Tylenol being used as the major pain medication during the rest of the hospitalization. [The

beneficiary] tolerated this well and had no medical problems as the result of correctly being taken off of the medication.

"With respect to the depression, she did very well considering the simultaneous removing of the dependency medications. The support structure of the staff, the use of the chemical aspect of the ATP program including group therapy, education therapy, and supportive and individual therapy, and her good work helped tremendously with this. In addition, I instigated antidepressant medication.

"Psychological testing was done by Dr. Rodriguez with a diagnostic impression as follows: atypical bipolar disorder, 296.70, and atypical anxiety disorder, 300.00, with underlying obsessive features, paranoid ideation and histrionic components.

* * * *

"FINAL DIAGNOSIS:

AXIS I	ATYPICAL BIPOLAR DISORDER, 296.70.
	ATYPICAL ANXIETY DISORDER, WITH UNDERLYING OBSESSIVE FEATURES, PARANOID IDEATION, AND HISTRIONIC COMPONENTS, 300.00.
AXIS II	DEPENDENCE ON A COMBINATION OF SUBSTANCES, EXCLUDING OPIODES AND ALCOHOL, 304.81.
	DYSTHYMIC DISORDER, 300.4.

At the conclusion of the hearing, the parties agreed to provide additional information concerning the pre-March 17, 1981, prescription drug usage by the beneficiary. OCHAMPUS referred the information submitted at the hearing concerning the pre-March 1981 drug usage to the Colorado Foundation for Medical Care for additional medical review. The reviewing physician was specifically asked whether, during the period of January 1, 1978, to March 17, 1981, the medical information provided by the beneficiary at the hearing established the medical necessity of the drugs and their appropriateness on the basis of the diagnosis and definitive symptoms. The medical reviewer responded that the medical information failed to establish significant findings of arthritis. He indicated that Percodan, Talwin, and Valium are not appropriate for osteoarthritis or depression. He stated that the records clearly indicate that the beneficiary had a history of chemical dependency on these drugs. Further, he opined that the file did not document the medical necessity for taking the drugs.

This reviewing physician also reviewed the 1983 hospital discharge summary which demonstrated a drug dependency problem

over the previous 4 years. In his opinion, continued prescription of these drugs served to prolong the state of dependency and was not medically necessary for the beneficiary. In addition, he indicated that, based on the prescriptions and the medical history documented in the 1983 discharge summary, the file indicates a very definite problem of drug overutilization dating back to 1978. He concluded by stating that the use of the prescription drugs is not definitive therapy for osteoarthritis or depression and therefore, not considered to be in keeping with the generally accepted norm for medical practice in the United States.

After receipt of this information and offering the beneficiary an opportunity to respond, the Hearing Officer concluded the hearing and has now submitted 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 issues in this appeal are (1) whether the prescription drugs provided the beneficiary from March 17, 1981, through December 11, 1981, were medically necessary and in keeping with the generally accepted norm for medical practice in the United States, and (2) whether a drug abuse situation existed prior to March 17, 1981, resulting in the erroneous payment of CHAMPUS claims for prescription drugs related to the drug abuse.

Medically Necessary

Under the CHAMPUS regulation, DoD 6010.8-R, chapter IV, A.1., the CHAMPUS Basic Program 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. Services which are not medically necessary are specifically excluded (Chapter IV, G.1.). Under chapter II, B.104., medically necessary is defined 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). Medically necessary includes concept of appropriate medical care."

Appropriate medical care is defined in chapter II, B.14, as follows:

> "14. Appropriate Medical Care. 'Appropriate medical care' means:
>
> "a. That medical care where the medical services performed in the treatment of a disease or injury, or in connection with an obstetrical case, 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."

The criteria for CHAMPUS coverage of prescription drugs and medicines are set forth in DoD 6010.8-R, chapter IV, D.3.f., in part, as follows:

"f. Prescription Drugs and Medicines. Prescription drugs and medicines which by law of the United States require a physician's or dentist's prescription and which are ordered or prescribed for by a physician or dentist (except that insulin is covered for a known diabetic, even though a prescription may not be required for its purchase) in connection with an otherwise covered condition or treatment, including Rhogam.

"(1) Drugs administered by a physician or other authorized individual professional provider as an integral part of a procedure covered under Sections B or C of this CHAPTER IV (such as chemotherapy) are not covered under this subparagraph inasmuch as the benefit for the institutional services or the professional services in connection with the procedure itself also includes the drug used.

"(2) CHAMPUS benefits may not be extended for drugs not approved by the Food and Drug Administration for general use by humans (even though approved for testing with humans.)"

CHAMPUS claims are subject to review for quality of care and appropriate utilization. (See paragraph A.10., chapter IV, DoD 6010.8-R.) Prescription drug claims are also subject to postpayment utilization review. Claims that fail established postpayment utilization review screens or appear to involve abnormal patterns of prescribing are developed through associated claims history or the request for additional medical records. This review process is always retrospective because each claim is viewed after the fact of the purchase of the medical supply or

service involved. Implicit in this utilization review process is the possibility that a particular medication supply or service at any time may be determined to be not medically necessary or beyond an appropriate level. This also means that even though benefits are initially extended on a particular claim, postpayment review may result in the emergence of an aberrant pattern which calls into question the medical necessity or appropriate level of the services or supplies involved.

To constitute a CHAMPUS covered service, the prescription of Valium, Percodan, and Talwin must, therefore, be adequate for the diagnosis and treatment of the beneficiary's illness and, correspondingly, actually treat her disease or illness. The illnesses or diseases attributed to the beneficiary herein include osteoarthritis of the knees and hips, latent syphilis, anxiety and depression, radicular pain in the legs, a resolved urinary tract infection, and mild varicosity. The acceptance and efficacy of the treatment of these diseases by Percodan, Talwin, and Valium must therefore be documented.

The appeal file herein contains several medical review opinions both from the fiscal intermediary and physicians associated with the Colorado Foundation for Medical Care. As noted by OCHAMPUS and the Hearing Officer, these opinions agree that these drugs were not medically necessary for the treatment of the beneficiary. In the medical review opinion dated November 11, 1982, the reviewing physicians opined that the beneficiary had a drug addiction problem and the medical necessity for continuing these drugs over the period of time in issue was not documented. Further, it was opined that the continuing use of these medications for the period of time involved was not in keeping with the generally accepted norm for medical practice in the United States.

The Hearing Officer found that the hearing record indicates that the beneficiary was in a chemical dependent state from March 17, 1981, through December 11, 1981, and was receiving treatment not medically necessary and not within the acceptable norm for practice in the United States. After careful review of the record, I conclude that the hearing record supports the Hearing Officer's findings.

The Department of Defense recognizes that the beneficiary became addicted to these prescription drugs through no fault of her own. The record indicates the physicians believed that use of the drugs was medically necessary to control or alleviate the pain that the beneficiary experienced. While these physicians may endorse programs they believe may assist individual patients, I am constrained by law and regulation to authorize benefits only for services and supplies which are determined to be medically necessary and generally accepted in the treatment of disease or illness.

The evidence herein discloses no evidence of the documented effectiveness or medical necessity of the use of Valium, Talwin, and Percodan in the treatment of the beneficiary's illnesses; instead, the file clearly indicates that these drugs were

inappropriate for the treatment of the beneficiary, especially when she was addicted to these medications. The Hearing Officer noted that the treating physician did not deny the fact that the beneficiary had become addicted to the medication she was prescribed, did not deny that the amounts prescribed were excessive, or did not deny that the use of these drugs was not in keeping with the generally accepted norm for medical practice in the United States. As stated by the Hearing Officer:

> "It is, therefore, uncontroverted that the Beneficiary was dependent on the drugs and medications that had been prescribed. Her treating physician clearly does not deny that decision. It is his opinion, however, that the dependence was being treated and that in the long-run, for the Beneficiary's best prognosis, a slow weaning process was indicated and was being pursued."

In addition to the above, I also find that the beneficiary's prescription drugs from January 1, 1978, through March 16, 1981, were not medically necessary nor appropriate in the beneficiary's treatment. The medical reviewers for the Colorado Foundation for Medical Care, after reviewing the hearing record regarding the beneficiary's pre-March 1981 prescription drugs, opined that the information did not establish the medical necessity of the drugs. The medical reviewer stated that the prescribed drugs (i.e., Percodan, Talwin, and Valium) are not appropriate treatment for the beneficiary's diagnosed osteoarthritis or depression.

Based on my review of the file, the testimony provided at the hearing, the Hearing Officer's Recommended Decision, and the medical reviews conducted by the Colorado Foundation for Medical Care and by the fiscal intermediary, I find that the use of the Percodan, Valium, and Talwin for treatment of this beneficiary's condition was not medically necessary nor appropriate in that it was not in keeping with the generally accepted norm for medical practice in the United States. The medical evidence of record does not establish the medical necessity or appropriateness of the prescription drugs from January 1, 1978, through December 11, 1981, on the basis of the documented diagnosis or definitive symptoms.

Drug Abuse

CHAMPUS does not cost-share prescription drugs related to drug abuse situations. The exclusion from CHAMPUS coverage is set forth in DoD 6010.8-R, chapter IV, E.11., as follows:

> "11. Drug Abuse. Under the CHAMPUS Basic Program, benefits may be extended for medically necessary prescription drugs required in the treatment of an illness or injury or in connection with maternity care (refer to Section D. of this CHAPTER IV).

However, CHAMPUS benefits cannot be authorized to support and/or maintain an existing or potential drug abuse situation, whether or not the drugs (under other circumstances) are eligible for benefit consideration and whether or not obtained by legal means.

"a. Limitation on Who Can Prescribe Drugs. CHAMPUS benefits are not available for any drugs prescribed by a member of the beneficiary/patient's family or by a non-family member residing in the same household with the beneficiary/patient (or sponsor). CHAMPUS Contractors are not authorized to make any exception to this restriction.

"b. Drug Maintenance Programs Excluded. Drug maintenance programs where one addictive drug is substituted for another on a maintenance basis (such as methadone substituted for heroin) are not covered. Further, this exclusion applies even in areas outside the United States where addictive drugs are legally dispensed by physicians on a maintenance dosage level.

"c. Kinds of Prescription Drugs Which Are Carefully Monitored by CHAMPUS for Possible Abuse Situations.

"(1) Narcotics. Examples are morphine and demerol.

"(2) Non-Narcotic Analgesics. Examples are Talwin and Darvon.

"(3) Tranquilizers. Examples are Valium, Librium, and Meprobamate.

"(4) Barbiturates. Examples are Seconal and Nembutal.

"(5) Non-barbiturate Hypnotics. Examples are Doriden and Chloral Hydrate.

"(6) Stimulants. Examples are Amphetamines and Methedrine.

"d. CHAMPUS Contractor Responsibilities. CHAMPUS Contractors are responsible for implementing utilization control and quality assurance procedures designed to identify possible drug abuse situations. The CHAMPUS Contractor is directed to screen all drug

claims for potential over-utilization and/or irrational prescribing of drugs, and to subject any such cases to extensive review to establish the necessity for the drugs and their appropriateness on the basis of diagnosis and/or definitive symptoms.

"(1) When a possible drug abuse situation is identified, all claims for drugs for that specific beneficiary and/or provider will be suspended pending the results of a review.

"(2) If the review determines that a drug abuse situation does in fact exist, all drug claims held in suspense will be denied.

"(3) If the record indicates previously paid drug benefits, the prior claims for that beneficiary and/or provider will be reopened and the circumstances involved reviewed to determine whether or not a drug abuse situation also existed at the time the earlier claims were adjudicated. If drug abuse is subsequently ascertained, benefit payments previously made will be considered to have been extended in error and the amounts so paid recouped.

"(4) Inpatient stays primarily for the purpose of obtaining drugs and any other services and supplies related to drug abuse situations are also excluded.

"e. Unethical or Illegal Provider Practices Related to Drugs. Any such investigation into a possible drug abuse situation which uncovers unethical or illegal drug dispensing practices on the part of an institution or physician, will be referred to the professional and/or investigative agency having jurisdiction. CHAMPUS Contractors are directed to withhold payment of all CHAMPUS claims for services and/or supplies rendered by a provider under active investigation for possible unethical or illegal drug dispensing activities.

"f. Detoxification. The above monitoring and control drug abuse situations shall in no way be construed to deny otherwise covered medical services and supplies related to drug detoxification (including newborn addicted infants) when medical supervision is required."

The Hearing Officer found that the hearing record indicated that a drug abuse situation existed from January 1, 1978, through March 16, 1981, and that under the CHAMPUS regulation CHAMPUS payments for prescription drugs during that period were erroneous. I find that the hearing record supports the findings of the Hearing Officer.

It is uncontroverted by both the treating physician and the beneficiary that she was, in fact, addicted to the drugs prescribed (i.e., Valium, Talwin, and Percodan) prior to March 16, 1981. The treating physician has indicated that he was actively treating the beneficiary's drug addiction. In accordance with the regulatory provisions cited above, the use of these drugs in a weaning (maintenance) program, is excluded from coverage under CHAMPUS. In addition, CHAMPUS coverage of otherwise authorized prescription drugs is prohibited in drug abuse situations unless the medical record establishes the necessity for the drugs and the appropriateness of the drugs on the basis of diagnosis and/or definitive symptoms.

Based on the record in this case, I find that the beneficiary was in a drug abuse situation from January 1, 1978, through December 11, 1981. I further find that the medical record fails to establish the necessity and appropriateness of the prescribed drugs on the basis of the beneficiary's diagnosis and/or definitive symptoms for the period January 1, 1978, through December 11, 1981. Finally, I find that the beneficiary was essentially on a drug maintenance program from March 17, 1981, through December 11, 1981, and her prescription drugs are, therefore, excluded from CHAMPUS coverage.

SUMMARY

In summary, it is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) that the prescription drugs (Valium, Percodan, and Talwin) that were prescribed the beneficiary from January 1978 through December 11, 1981, were not medically necessary and were not appropriate care in that the use of these drugs in the treatment of the beneficiary's diagnosed condition or definitive symptoms was not in keeping with the generally accepted norm for medical practice in the United States. Therefore, the use of these drugs is not covered under CHAMPUS. The appeal of the beneficiary for the CHAMPUS cost-sharing of these drugs is therefore, denied. Because it has been determined that CHAMPUS has erroneously paid for prescription drugs prior to March 11, 1981, the Director, OCHAMPUS, is directed to review this issue and initiate recoupment action as appropriate under the Federal Claims Collection Act. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter IX and no further administrative appeal is available.

Vernon McKenzie
Acting Principal Deputy Assistant Secretary