

Custodial Care

Court Decisions

The plan provided non-custodial nursing care where it was medically necessary and ordered by a physician and where routine nursing care would be insufficient because of the participant's condition. The plan acted in accordance with these terms in denying benefits for in-home, *custodial* nursing for a terminally-ill participant, where the participant could not establish that private duty nursing was medically necessary. An appeals court used the dictionary to define custodial when it was not defined in the plan; the court held that the attention given to the safety and well-being of the participant that most importantly or consequently consisted of protection, care, maintenance and tuition was not custodial; also, that care which involved administering medication, treating bed sores, and applying a catheter was not custodial.

Another court used analogous federal statutes that used the term *custodial* and the implementing regulations to give meaning to a plan's otherwise undefined use of the term *custodial care*. Thus, an institution whose primary goals were therapy and treatment and whose institutional goals were to reduce future levels of care could not be considered as providing primarily custodial care, since the CHAMPUS regulations define *custodial care* as care rendered to a patient who (1) is disabled mentally or physically and such disability is expected to continue and be prolonged, (2) requires a protected, monitored, or controlled environment whether in an institution or in the home, (3) requires assistance to support the essentials of daily living, and (4) is not under active or specific medical, surgical, or psychiatric treatment that will reduce the disability to the extent necessary to enable the patient to function outside the protected, monitored, or controlled environment.

The plan was wrong in terminating in-home nursing benefits to a multiple sclerosis patient on the grounds that the disease is essentially non-treatable and that any home care would be in the nature of *maintenance*. While the plan excluded benefits for maintenance care, it was unreasonable to interpret *maintenance* as precluding benefits for the claimant, where to do so would allow the plan to avoid payment of many benefits that were expressly listed in the contract, such as (1) charges for a registered nurse for services both in and out of the hospital, (2) charges for drugs requiring administration by qualified personnel, (3) rental of equipment such as a wheelchair and dialysis equipment, and (4) in-home health care provided by a home health care agency.