

MEDICAL CONTESTED CASE HEARING NO 11167
M6-10-1125-01

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on June 6, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision (MFDRFD) that (Healthcare Provider), Petitioner, is not entitled to reimbursement for the Claimant's compensable injury of (Date of Injury) in the amount of \$21.54 for 90 units of Methocarbamol 750 mg tablets dispensed on June 19, 2008; in the amount of \$327.06 for 60 units of Naproxen 500 mg tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009; in the amount of \$733.32 for 240 units of Hydrocodone/APAP 10/325 tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009; in the amount of \$197.74 for 90 units of Orphenadrine 100 mg tablets dispensed on July 17, 2008 and August 16, 2008; in the amount of \$132.22 for 60 units of Orphenadrine 100 mg tablets dispensed on September 19, 2008 and October 18, 2008; in the amount of \$228.98 for 60 units of Skelaxin 800 mg tablets dispensed on November 13, 2008, December 17, 2008 and January 12, 2009; and in the amount of \$31.15 for 30 units of Ambien CR 12.5 mg tablets dispensed on February 5, 2009?

PARTIES PRESENT

Petitioner, (Healthcare Provider), appeared and was represented by HK, attorney. Respondent, Texas Mutual Insurance Company, Carrier, appeared and was represented by BJ, attorney. Claimant did not appear and his attendance was excused.

BACKGROUND INFORMATION

The parties stipulated that the medications for which additional reimbursement was sought in this case were dispensed as part of the medical care reasonably required for the Claimant's compensable (Date of Injury) injury. The sole issue in dispute at this hearing concerns whether (Healthcare Provider) is entitled to additional reimbursement in the total amount of \$1,672.01 for the dispensed medications at issue. At the heart of this dispute is the question of whether (Healthcare Provider) has met its burden to establish its usual and customary (U&C) charges for the medications at issue.

The following table serves to outline the overall dispute between (Healthcare Provider) and Carrier in this case:

Table 1

| Date(s) of Service (DOS) | Medication / No. of Units for each DOS | (Healthcare Provider) Charge to Carrier for each DOS | Carrier Reimbursement to (Healthcare Provider) for each DOS | Amount in Dispute |
|---|---|--|---|---|
| 6/19/08 | Methocarbamol 750 mg tablets / 90 units | \$56.60 | \$35.06 | \$21.54 |
| 6/20/08, 7/18/08, 8/16/08, 9/19/08, 10/18/08, 11/14/08, 12/17/08, 1/12/09, 2/6/09 | Naproxen 500 mg tablets / 60 units | \$93.50 | \$57.16 | \$327.06 (\$36.34 x 9) |
| 6/20/08, 7/18/08, 8/16/08, 9/19/08, 10/18/08, 11/14/08, 12/17/08, 1/12/09, 2/6/09 | Hydrocodone/APAP 10/325 tablets / 240 units | \$206.40 | \$124.92 | \$733.32 (\$81.48 x 9) |
| 7/17/08, 8/16/08 | Orphenadrine 100 mg tablets / 90 units | \$249.80 | \$150.93 | \$197.74 (\$98.87 x 2) |
| 9/19/08, 10/18/08 | Orphenadrine 100 mg tablets / 60 units | \$167.90 | \$101.79 | \$132.22 (\$66.11 x 2) |
| 11/13/08, 12/17/08, 1/12/09 | Skelaxin 800 mg tablets / 60 units | 11/13/08 - \$259.30 12/17/08 - \$282.30 1/12/09 - \$282.30 | 11/13/08 - \$187.28 12/17/08 - \$203.82 1/12/09 - \$203.82 | \$228.98 (\$72.02 + \$78.48 + \$78.48) |
| 2/5/09 | Ambien CR 12.5 mg tablets / 30 units | \$178.80 | \$147.65 | \$31.15 |

The evidence presented in the hearing indicated that the reimbursement that the Carrier provided to (Healthcare Provider) was based on Carrier's calculation of a reasonable and customary fee for the medications.

After its request for reconsideration of the reimbursement amounts was denied by Carrier, (Healthcare Provider) sought relief through the Division's Medical Fee Dispute Resolution (MFDR) section in order to obtain the additional reimbursement from the Carrier for the dispensed medications outlined above. On January 12, 2011, the Division's MFDR Officer issued a decision, an MFDRFD, holding that (Healthcare Provider) was not entitled to the additional reimbursement at issue herein from Carrier. The MFDRFD indicates that the Division was not provided with sufficient evidence to substantiate (Healthcare Provider)'s U&C charges for the medications in question. On that basis, the MFDR Officer concluded that the maximum allowable reimbursement (MAR) defined in Division Rule 134.503(a) cannot be established for any of the medications in question. Following the adverse decision from MFDR, (Healthcare Provider) requested a medical contested case hearing (MCCH) to resolve this fee dispute.

An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. (Texas Labor Code §408.021). The term "health care" includes a prescription drug, medicine, or other remedy. (Texas Labor Code §401.011(19)(E)). The commissioner of the Division of Workers' Compensation is directed by statute to adopt a fee schedule for pharmacy and pharmaceutical services that will provide reimbursement rates that are fair and reasonable; assure adequate access to medications and services for injured workers; and minimize costs to employees and insurance carriers. (Texas Labor Code §408.028(f)). Insurance carriers must reimburse for pharmacy benefits and services using the fee schedule or at rates negotiated by contract. (Texas Labor Code §408.028(g)). The commissioner has adopted reimbursement methodology to establish the MAR for prescription drugs in Rule 134.503.

Pursuant to Rule 134.503, the MAR for prescription drugs is the lesser of the provider's U&C charge for the same or similar service or a fee established by formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system such as Redbook or First DataBank Inc. in effect on the day the prescription drug was dispensed. For brand name drugs, the formula is AWP per unit multiplied by 1.09, plus a \$4.00 dispensing fee, and for generic drugs, the formula is AWP per unit multiplied by the number of units multiplied by 1.25, plus a \$4.00 dispensing fee. *See* Rule 134.503(a)(2)(A) and (B). The evidence presented at the hearing revealed that the Skelaxin and Ambien CR medications are brand name drugs, and the Methocarbamol, Naproxen, Hydrocodone and Orphenadrine medications are generic drugs. The parties also stipulated that there is no contract between (Healthcare Provider) and the Carrier, so Rule 134.503(a)(3) does not apply to the facts of this case.

On December 11, 2003, RR, the Executive Director of the Texas Workers' Compensation Commission, issued Advisory 2003-21 to address the determination of a pharmacy's U&C charge for prescription drugs. In part, the Advisory states:

The Commission's pharmacy prescription pricing rule is based, in part, on several important provisions concerning health care provider charges. First, fee guidelines are based, in part, on a

provision that payment may not be in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf (Texas Labor Code Section 413.011(d)). Also, "[a] health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges" (Texas Labor Code §413.043(a)).

Parties requesting medical dispute resolution should ensure that they abide by the statute and rule references outlined above. The Commission's Medical Dispute Resolution Section has indicated that parties filing a dispute have the burden of proof to support their position for advocating additional reimbursement. The burden of proof includes production of sufficient evidence to support that the reimbursement requested is in accordance with the factors listed in §413.011(b) of the Texas Workers' Compensation Act.

(Healthcare Provider) has the burden to establish its entitlement to the additional reimbursement it seeks. In support of its argument that it is entitled to the reimbursement at issue, (Healthcare Provider)'s Pharmacist in Charge, Mr. H, provided an affidavit that was admitted into evidence in the hearing. Mr. H's April 29, 2011 affidavit indicates that (Healthcare Provider) makes no distinction between AWP and its U&C charges to avoid any discrepancy. (Healthcare Provider) also furnished literature and pricing information from Rx30, a professional billing and pricing hardware and software program that (Healthcare Provider) utilizes. The evidence presented in the hearing included an e-mail from Ms. P, an employee of Rx30, who indicated that Rx30 does not calculate AWP itself, but, rather, it frequently obtains average wholesale pricing information for medications from First DataBank, Inc., a nationally recognized pharmaceutical reimbursement system. Ms. P's e-mail indicated that AWP's may vary if sources other than First DataBank, Inc. are used.

Concerning Methocarbamol 750 mg tablets, (Healthcare Provider) presented a document with Rx30 letterhead indicating that the AWP for this medication on the date at issue was 0.4676. As illustrated in the table above, the amount that (Healthcare Provider) charged the Carrier for 90 units of the medication was \$56.60.

The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for the Methocarbamol for 90 units:

$$\begin{aligned} \$0.4676 \text{ (AWP)} \times 90 \text{ (\# of units)} &= \$42.084 \text{ (rounded down to } \$42.08); \$42.08 \times \\ 1.25 &= \$52.60 \end{aligned}$$

$$\$52.60 + \$4.00 \text{ (dispensing fee)} = \$56.60$$

The dispensing records from (Healthcare Provider) for this medication for the period of June 1, 2008 through June 30, 2008 showed that its U&C charge for 90 units of the drug was \$56.70 during this period, based on what it charged other customers for 90 units of the medication, which is higher than what it charged the Carrier herein. As noted, (Healthcare Provider) charged the Carrier \$56.60, which is equal to the amount elicited from the Rule 134.503(a)(2)(A) formula, and this amount is the MAR for this medication for the date of service in question.

(Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$21.54 for this medication.

Regarding the Naproxen 500 mg tablets, (Healthcare Provider) presented a document with Rx30 letterhead showing that the AWP for this medication on the dates in question was 1.19333. As shown in the table above, the amount that (Healthcare Provider) charged the Carrier for 60 units of the medication was \$93.50.

The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for Naproxen 500 mg tablets for 60 units:

$$\begin{aligned} \$1.19333 \text{ (AWP)} \times 60 \text{ (\# of units)} &= \$71.5998 \text{ (rounded up to } \$71.60); \$71.60 \times \\ 1.25 &= \$89.50 \end{aligned}$$

$$\$89.50 + \$4.00 \text{ (dispensing fee)} = \$93.50$$

The dispensing records from (Healthcare Provider) for this medication for the period of June 20, 2008 through February 6, 2009 were persuasive in establishing that its U&C charge for 60 units of the drug was \$93.50 during this period. As the evidence was sufficient for (Healthcare Provider) to establish its U&C charge for the Naproxen 500 mg, and that such U&C was equal to the amount elicited from the Rule 134.503(a)(2)(A) formula, (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$327.06 for this medication.

Regarding the Hydrocodone/APAP 10/325 tablets, (Healthcare Provider) presented a document with Rx30 letterhead showing that the AWP for this medication on the dates in question was 0.675. As shown in the table above, the amount that (Healthcare Provider) charged the Carrier for 240 units of the medication was \$206.40.

The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for Hydrocodone/APAP 10/325 tablets for 240 units:

$$\$0.675 \text{ (AWP)} \times 240 \text{ (\# of units)} = \$162.00$$

$$\$162.00 \times 1.25 = \$202.50$$

$$\$202.50 + \$4.00 \text{ (dispensing fee)} = \$206.50$$

$$\text{MAR} = \$206.40 \text{ (U\&C)}$$

The dispensing records from (Healthcare Provider) for this medication for the period of June 20, 2008 through February 6, 2009 were persuasive in establishing that its U&C charge for 240 units of the drug was \$206.40 during this period. As the evidence was sufficient for (Healthcare Provider) to establish its U&C charge for the Hydrocodone/APAP 10/325 tablets, and that such U&C was less than the amount elicited from the Rule 134.503(a)(2)(A) formula (\$206.50), (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$733.32 for this medication.

As it relates to the Orphenadrine 100 mg tablets, (Healthcare Provider) presented a document with Rx30 letterhead showing that the AWP for this medication on the dates in question was 2.1853. As shown in the table above, the amount that (Healthcare Provider) charged the Carrier for 90 units of the medication was \$249.80, and for 60 units it charged \$167.90.

The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for Orphenadrine 100 mg tablets for 90 units and 60 units, respectively:

$$\$2.1853 \text{ (AWP)} \times 90 \text{ (\# of units)} = \$196.677 \text{ (rounded up to } \$196.68)$$

$$\$196.68 \times 1.25 = \$245.85$$

$$\$245.85 + \$4.00 \text{ (dispensing fee)} = \$249.85$$

$$\text{MAR} = \$249.80 \text{ (U\&C for 90 units)}$$

$$\$2.1853 \text{ (AWP)} \times 60 \text{ (\# of units)} = \$131.118 \text{ (rounded up to } \$131.12)$$

$$\$131.12 \times 1.25 = \$163.90$$

$$\$163.90 + \$4.00 \text{ (dispensing fee)} = \$167.90$$

The dispensing records from (Healthcare Provider) for this medication for the period of July 17, 2008 through October 18, 2008 were persuasive in establishing that its U&C charge for 90 units of the drug was \$249.80 during this period, and its U&C charge for 60 units was \$167.90. Since the evidence was sufficient to establish that its U&C charge for 90 units of the Orphenadrine 100 mg tablets was less than the amount elicited from the Rule 134.503(a)(2)(A) formula (\$249.85), (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$197.74 for 90 units of this medication dispensed on the two dates in question.

In addition, since the evidence demonstrated that its U&C charge for 60 units of the Orphenadrine 100 mg tablets was equal to the Rule 134.503(a)(2)(A) formula amount, (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$132.22 for 60 units of this medication dispensed on the two dates in question.

With regard to the Skelaxin 800 mg tablets, (Healthcare Provider) did not offer into evidence any documentation from Rx30 or any other source to establish the AWP for this medication for the dates in question. The only pertinent evidence presented for this medication was the amount that (Healthcare Provider) charged the Carrier for the drug on the three dates of service, and the amount that the Carrier paid (Healthcare Provider) in connection with those charges. No information was presented regarding any other sales of this medication during the period in question, from November 13, 2008 through January 12, 2009. Under this state of facts, (Healthcare Provider) has not established its U&C charge for Skelaxin 800 mg tablets for the dates in question. Consequently, the MAR cannot be determined for this medication in this case, which leads to the conclusion that (Healthcare Provider) is not entitled to any additional reimbursement for dispensing it to the Claimant on November 13, 2008, December 17, 2008 or January 12, 2009.

Finally, as it concerns the Ambien CR 12.5 mg tablets, (Healthcare Provider) presented a document with Rx30 letterhead showing that the AWP for this medication on the date in question was 5.3456. As shown in the table above, the amount that (Healthcare Provider) charged the Carrier for 30 units of the medication was \$178.80.

The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(B) for Ambien CR 12.5 mg tablets for 30 units:

$$\$5.3456 \text{ (AWP)} \times 30 \text{ (\# of units)} = \$160.368 \text{ (rounded up to } \$160.37\text{); } \$160.37 \times 1.09 = \$174.8033 \text{ (rounded down to } \$174.80\text{)}$$

$$\$174.80 + \$4.00 \text{ (dispensing fee)} = \$178.80$$

The dispensing records from (Healthcare Provider) for this medication for the period of February 1, 2009 through February 28, 2009 were persuasive in establishing that its U&C charge for 30 units of the drug was \$178.80 during this period. As the evidence was sufficient for (Healthcare Provider) to establish its U&C charge for the Ambien CR 12.5 mg tablets, and that such U&C was equal to the amount elicited from the Rule 134.503(a)(2)(B) formula, (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$31.15 for this medication.

The Division's MFDR Officer determined that (Healthcare Provider) was not entitled to additional reimbursement for the medications at issue that were dispensed to Claimant on the dates listed above. The preponderance of the evidence is not contrary to this determination as it relates to the Skelaxin 800 mg tablets that were dispensed by (Healthcare Provider) to the Claimant on November 13, 2008, December 17, 2008 and January 12, 2009. On the other hand, the preponderance of the evidence is contrary to the decision of the MFDR Officer as it relates to each of the other medications at issue herein. Except as it pertains to the Skelaxin, (Healthcare Provider) provided sufficient evidence to establish that its U&C charges for the other medications in dispute were in accordance with the fee schedule charge computed in accordance with Rule 134.503(a)(2) on the dates they were dispensed, and (Healthcare Provider) is entitled to additional reimbursement in the total amount of \$1,443.03 relative to its claim herein pertaining to the Methocarbamol, Naproxen, Hydrocodone, Orphenadrine and Ambien medications. (Healthcare Provider) is not entitled to any additional reimbursement for Skelaxin.

The evidence showed that (Healthcare Provider)'s customers are almost exclusively workers' compensation patients, although it does have a very few customers who are not workers' compensation patients. In addition, while the evidence revealed that (Healthcare Provider) does offer a discount to customers who pay for their medications in cash, the evidence also showed that the percentage of such customers is an extremely small one, significantly less than 1% of (Healthcare Provider)'s business.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties present stipulated as follows:
 - A. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction over this matter, and venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. Claimant sustained a compensable injury on (Date of Injury).
 - C. The medications for which reimbursement was sought in this case were dispensed as part of the medical care for the compensable injury of (Date of Injury).
 - D. (Healthcare Provider) has no negotiated or contractual pharmacy fee agreement with Texas Mutual Insurance Co. payable pursuant to Rule 134.503(a)(3).
2. Respondent delivered to Petitioner a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. On (Date of Injury), Claimant was the employee of (Employer), Employer.
4. (Healthcare Provider) established the AWP of the prescription drugs Methocarbamol 750 mg tablets, Naproxen 500 mg tablets, Hydrocodone/APAP 10/325 tablets, Orphenadrine 100 mg tablets and Ambien CR 12.5 tablets at issue in this case on the dispensing dates in dispute by providing information from Rx30, a professional billing and pricing hardware and software program. Rx30 obtained this data from a nationally recognized pharmaceutical reimbursement system (First DataBank, Inc.).
5. On June 19, 2008, (Healthcare Provider) dispensed 90 units of Methocarbamol 750 mg tablets to the Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed the Carrier in the amount of \$56.60 for this medication for this date of service.
6. Methocarbamol is a generic drug.
7. For Methocarbamol 750 mg tablets, the AWP on the date of service in dispute was 0.4676 pursuant to the data furnished by Rx30.
8. (Healthcare Provider)'s U&C charge for 90 units of Methocarbamol 750 mg tablets on June 19, 2008 was \$56.60.
9. For the 90 units of Methocarbamol 750 mg tablets dispensed on June 19, 2008, the Carrier reimbursed (Healthcare Provider) a total of \$35.06.
10. The MAR for 90 units of Methocarbamol 750 mg tablets dispensed on June 19, 2008 was \$56.60, which is equal to the amount elicited from the 134.503(a)(2)(A) formula calculation.
11. On June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009, and February 6, 2009,

(Healthcare Provider) dispensed 60 units of Naproxen 500 mg tablets to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$841.50 for this medication for these DOS.

12. Naproxen is a generic drug.
13. For Naproxen 500 mg tablets, the AWP on the dates of service in dispute was 1.19333 pursuant to the data furnished by Rx30.
14. (Healthcare Provider)'s U&C charge for 60 units of Naproxen 500 mg tablets on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009 was \$93.50.
15. For the 60 units of Naproxen 500 mg tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009, the Carrier reimbursed (Healthcare Provider) the amount of \$57.16 (or a total amount of \$514.44 for 9 DOS).
16. The MAR for 60 units of Naproxen 500 mg tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009 was \$93.50 (or a total of \$841.50 for 9 DOS), which is equal to the amount elicited from the 134.503(a)(2)(A) formula calculation.
17. On June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009, and February 6, 2009, (Healthcare Provider) dispensed 240 units of Hydrocodone/APAP 10/325 tablets to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$1,857.60 for this medication for these DOS.
18. Hydrocodone is a generic drug.
19. For the Hydrocodone/APAP 10/325 tablets, the AWP on the dates of service in dispute was 0.675 pursuant to the data furnished by Rx30.
20. (Healthcare Provider)'s U&C charge for 240 units of Hydrocodone/APAP 10/325 tablets on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009 was \$206.40.
21. For the 240 units of Hydrocodone/APAP 10/325 tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009, the Carrier reimbursed (Healthcare Provider) the amount of \$124.92 (or a total amount of \$1,124.28 for 9 DOS).
22. The MAR for 240 units of Hydrocodone/APAP 10/325 tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009 was \$206.40 (or a total amount

of \$1,857.60 for 9 DOS), which is less than the amount elicited from the 134.503(a)(2)(A) formula calculation.

23. On July 17, 2008 and August 16, 2008, (Healthcare Provider) dispensed 90 units of Orphenadrine 100 mg tablets to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$499.60 for this medication for these DOS.
24. On September 19, 2008 and October 18, 2008, (Healthcare Provider) dispensed 60 units of Orphenadrine 100 mg tablets to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$335.80 for this medication for these DOS.
25. Orphenadrine is a generic drug.
26. For the Orphenadrine 100 mg tablets, the AWP on the dates of service in dispute was 2.1853 pursuant to the data furnished by Rx30.
27. (Healthcare Provider)'s U&C charge for 90 units of Orphenadrine 100 mg tablets on July 17, 2008 and August 16, 2008 was \$249.80.
28. (Healthcare Provider)'s U&C charge for 60 units of Orphenadrine 100 mg tablets on September 19, 2008 and October 18, 2008 was \$167.90.
29. For the 90 units of Orphenadrine 100 mg tablets dispensed on July 17, 2008 and August 16, 2008, the Carrier reimbursed (Healthcare Provider) the amount of \$150.93 (or a total amount of \$301.86 for 2 DOS).
30. The MAR for 90 units of Orphenadrine 100 mg tablets dispensed on July 17, 2008 and August 16, 2008 was \$249.80 (or a total amount of \$499.60 for 2 DOS), which is less than the amount elicited from the 134.503(a)(2)(A) formula calculation.
31. For the 60 units of Orphenadrine 100 mg tablets dispensed on September 19, 2008 and October 18, 2008, the Carrier reimbursed (Healthcare Provider) the amount of \$101.79 (or a total amount of \$203.58 for 2 DOS).
32. The MAR for 60 units of Orphenadrine 100 mg tablets dispensed on September 19, 2008 and October 18, 2008 was \$167.90 (or a total amount of \$335.80 for 2 DOS), which is equal to the amount elicited from the 134.503(a)(2)(A) formula calculation.
33. On November 13, 2008, December 17, 2008 and January 12, 2009, (Healthcare Provider) dispensed 60 units of Skelaxin 800 mg tablets to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$823.90 for this medication for these DOS.
34. Skelaxin is a brand name drug.
35. (Healthcare Provider) did not establish either the AWP or its U&C charge for the prescription drug Skelaxin 800 mg tablets on the dispensing dates in dispute.

36. For 60 units of Skelaxin 800 mg tablets, the Carrier reimbursed (Healthcare Provider) the amount of: 1) \$187.28 relative to a dispense date of November 13, 2008, 2) \$203.82 relative to a dispense date of December 17, 2008, and 3) \$203.82 relative to a dispense date of January 12, 2009.
37. The MAR for the 60 units of Skelaxin 800 mg tablets dispensed by (Healthcare Provider) to the Claimant on November 13, 2008, December 17, 2008 and January 12, 2009 cannot be determined.
38. On February 5, 2009, (Healthcare Provider) dispensed 30 units of Ambien CR 12.5 mg tablets to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier in the amount of \$178.80 for this medication for this DOS.
39. Ambien CR is a brand name drug.
40. For the Ambien CR 12.5 mg tablets, the AWP on the dates of service in dispute was 5.3456 pursuant to the data furnished by Rx30.
41. (Healthcare Provider)'s U&C charge for 30 units of Ambien CR 12.5 mg tablets on February 5, 2009 was \$178.80.
42. For the 30 units of Ambien CR 12.5 mg tablets dispensed on February 5, 2009, the Carrier reimbursed (Healthcare Provider) the amount of \$147.65.
43. The MAR for 30 units of Ambien CR 12.5 mg tablets dispensed on February 5, 2009 was \$178.80, which is equal to the amount elicited from the 134.503(a)(2)(B) formula calculation.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the MFDRFD that (Healthcare Provider), Petitioner, is not entitled to any additional reimbursement for 60 units of Skelaxin 800 mg tablets dispensed to the Claimant on November 13, 2008, December 17, 2008 or January 12, 2009 for the Claimant's compensable injury of (Date of Injury).
4. The preponderance of the evidence is contrary to the MFDRFD that (Healthcare Provider), Petitioner, is not entitled to reimbursement in the total amount of \$1,443.03 for 90 units of Methocarbamol 750 mg tablets dispensed on June 19, 2008; for 60 units of Naproxen 500 mg tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009; for 240 units of Hydrocodone/APAP 10/325 tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009; for 90 units of Orphenadrine

100 mg tablets dispensed on July 17, 2008 and August 16, 2008; for 60 units of Orphenadrine 100 mg tablets dispensed on September 19, 2008 and October 18, 2008; and for 30 units of Ambien CR 12.5 mg tablets dispensed on February 5, 2009 for the Claimant's compensable injury of (Date of Injury).

DECISION

(Healthcare Provider) is not entitled to additional reimbursement for 60 units of Skelaxin 800 mg tablets dispensed on November 13, 2008, December 17, 2008 or January 12, 2009 for the Claimant's compensable (Date of Injury) injury.

(Healthcare Provider) is entitled to additional reimbursement in the total amount of \$1,443.03 for 90 units of Methocarbamol 750 mg tablets dispensed on June 19, 2008; for 60 units of Naproxen 500 mg tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009; for 240 units of Hydrocodone/APAP 10/325 tablets dispensed on June 20, 2008, July 18, 2008, August 16, 2008, September 19, 2008, October 18, 2008, November 14, 2008, December 17, 2008, January 12, 2009 and February 6, 2009; for 90 units of Orphenadrine 100 mg tablets dispensed on July 17, 2008 and August 16, 2008; for 60 units of Orphenadrine 100 mg tablets dispensed on September 19, 2008 and October 18, 2008; and for 30 units of Ambien CR 12.5 mg tablets dispensed on February 5, 2009 for the Claimant's compensable (Date of Injury) injury.

ORDER

The Carrier is not liable for the additional reimbursement at issue in this hearing regarding the Skelaxin medication dispensed on the dates stated herein.

The Carrier is liable for the additional reimbursement at issue in this hearing regarding the Methocarbamol, Naproxen, Hydrocodone, Orphenadrine and Ambien CR medications dispensed on the dates stated herein. The Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON WRIGHT, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 21st day of July, 2011.

Patrice Fleming-Squirewell
Hearing Officer