

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 September 15, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is not entitled to additional reimbursement in the amount of \$9.42 for Phenazopyridine 200MG tablet - 200MG (30-day supply) dispensed to Claimant on November 19, 2009?

PARTIES PRESENT

Petitioner (HCP) appeared, by telephone, and was represented by PR, attorney. Respondent (Carrier) appeared and was represented by BJ, attorney. Claimant did not appear and her attendance was excused.

BACKGROUND INFORMATION

The Claimant sustained a compensable injury on _____ and the medication for which additional reimbursement is sought was dispensed as part of the medical care for the compensable injury. November 19, 2009, HCP dispensed a 30-day supply of Phenazopyridine 200MG tablet to Claimant. HCP billed Respondent (Carrier) \$26.30 for this prescription. Carrier disagreed with the price charged by HCP and estimated that \$16.88 was a reasonable cost for the medication which was the amount remitted to HCP. HCP invoked the Division's Medical Dispute Resolution (MFDR) system in an attempt to secure what it considered to be full payment for the medications dispensed to Claimant.

On June 3, 2010, the Division's MFDR Officer issued a decision that HCP had failed to provide sufficient evidence to determine HCP's usual and customary (U&C) charge for Phenazopyridine 200MG tablet, the MAR (Maximum Allowable Reimbursement - the lesser of the U&C or formula amount pursuant to Division Rule 134.503) could not be determined, and HCP was not entitled to any additional reimbursement. HCP appealed that decision to a contested case hearing.

DT, HCP's reimbursement manager, testified that HCP is a mail-order pharmacy, licensed to dispense prescription medications in all 50 states, that specializes in providing prescription medication to workers' compensation claimants. HCP also has customers whose cases arise outside the workers' compensation arena, including a small percentage of customers who "pre-pay" their prescriptions at a discounted rate. The pre-pay customers pay cash for their medications as opposed to having an invoice submitted to an insurance carrier. DT testified that

non-cash customers outside the workers' compensation system are charged the same rates that are charged in workers' compensation cases, but cash customers pay the discounted rate.

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)). There is no contract between HCP and Carrier applicable to the issue in dispute at this hearing.

Pursuant to Rule 134.503, 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 Data Bank Services in effect on the day the prescription drug was dispensed. For generic drugs, the formula is $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00 \text{ dispensing fee}$ and for brand name drugs the formula was $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00 \text{ dispensing fee}$. (Division Rule 134.503(a)(2)).

On December 11, 2003, (Executive Director), 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.

HCP has the burden to demonstrate its entitlement to the additional reimbursement it seeks. DT testified that, although reimbursement varies per state, they calculate the U&C charge for brand name drugs at $AWP \times 1.78 \times \text{number of units} + \$4.50 \text{ dispensing fee}$ and for generic drugs $AWP \times 1.25 \times \text{number of units} + \$4.50 \text{ dispensing fee}$. The medication at issue in this case is a generic

drug. DT' affidavit in evidence indicates that the U&C charge for this particular prescription was calculated at the AWP x 1.25 + \$4.00 dispensing fee. In evidence is a print out dated September 2, 2010 of a price history for Phenazopyridine 200MG tablets indicating that the AWP for each unit was 0.84950. The print out is copyrighted by First DataBank, Inc. The document indicates that the effective dates for the AWP prices are the current price as of August 3, 2001. Although it does not specifically note the AWP on the particular date this drug was dispensed to the Claimant, it appears from the document that the AWP listed is the current amount as of the effective date to the present since there is a prior effective date of November 6, 1996. The heading over the effective date is "Current" and the document is dated September 2, 2010.

HCP's request for additional reimbursement was denied by MDRF because it did not provide sufficient information to support the claimed U&C charge. At this hearing, additional information was provided to determine the AWP. HCP introduced into evidence the AWP determined by utilizing a nationally recognized pharmaceutical reimbursement system (First Data Bank Services) in effect on the day the prescription drug was dispensed as required by Rule 134.503 in calculating the MAR. Based on the evidence presented, HCP's U&C charge for the prescription in question, on the date the medication was dispensed, was AWP (0.8495) x 1.25 x number of units (21) + \$4.00 dispensing fee = \$26.30. Therefore, HCP is entitled to reimbursement in the amount of \$9.42.

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 stipulated as follows:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, Claimant was employed by (Employer).
 - C. Claimant sustained a compensable injury on _____.
2. Carrier delivered to Claimant 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 November 19, 2009, HCP dispensed a 30-day supply of Phenazopyridine 200MG to Claimant as part of the medical care for the compensable injury.
4. HCP billed Carrier \$26.30, the formula amount computed in accordance with Rule 134.503(a)(2)(A), and Carrier reimbursed HCP \$16.88.
5. There was no negotiated or contracted amount payable pursuant to Rule 134.503(a)(3).
6. HCP provided the AWP of the prescription drug at issue using information from a nationally recognized pharmaceutical reimbursement system (First DataBank, Inc.)

effective on November 19, 2009, the date the Phenazopyridine 200MG was dispensed to the Claimant.

7. The AWP on November 19, 2009, the date the prescription was dispensed, was 0.8495 pursuant to the data provided by First DataBank, Inc.
8. HCP's U&C charge for the prescription in question on the date it was dispensed was \$26.30.

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 contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is not entitled to additional reimbursement in the amount of \$9.42 for the 30-day supply of Phenazopyridine 200MG tablet – 200MG dispensed to Claimant on November 19, 2009.

DECISION

(Healthcare Provider), Petitioner, is entitled to additional reimbursement in the amount of \$9.42 for the 30-day supply of Phenazopyridine 200MG tablet – 200MG dispensed to Claimant on November 19, 2009.

ORDER

Carrier is liable for the benefits at issue in this hearing. 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
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 28th day of September, 2010.

CAROL A. FOUGERAT
Hearing Officer