

MEDICAL CONTESTED CASE HEARING NO. 11048
M4-09-3864-01

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 September 29, 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 \$50.29 for Lexapro 20MG Tablet and Hydrocodone – APAP 10-325 Tablet dispensed to Claimant on August 12, 2008 for the compensable injury of _____?

PARTIES PRESENT

Petitioner, (Healthcare Provider) (HCP), appeared and was represented by JB, 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 for Claimant's compensable injury of _____. On August 12, 2008, HCP dispensed 30 units of Lexapro 20MG tablets and a 90-unit supply of Hydrocodone – APAP 10-325 tablets to Claimant. HCP billed Carrier a total of \$112.60 for the Lexapro and a total of \$79.89 for the Hydrocodone. In response, Carrier reimbursed HCP in the amount of \$93.17 for the Lexapro and a total of \$49.03 for the Hydrocodone based on Carrier's computation of a reasonable fee for these medications. After its request for reconsideration was denied by Carrier, HCP requested relief through the Division's Medical Fee Dispute Resolution (MFDR) section in order to obtain additional reimbursement in the total amount of \$50.29 from Carrier. The \$50.29 amount reflects the difference between what HCP billed Carrier (\$112.60 for the Lexapro and \$79.89 for the Hydrocodone) and what Carrier reimbursed HCP (\$93.17 for the Lexapro and \$49.03 for the Hydrocodone).

On May 26, 2010, the Division's MFDR Officer issued a decision ("Medical Fee Dispute Resolution Findings and Decision") holding that HCP was not entitled to additional reimbursement from Carrier. The rationale behind the decision was that the Division was not provided with sufficient evidence to determine HCP's usual and customary (U&C) charge for the drugs at issue. Following the adverse decision from MFDR, HCP appealed to a medical contested case hearing.

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 maximum allowable reimbursement (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 generic drugs, the formula is AWP per unit multiplied by the number of units multiplied by 1.25, plus a \$4.00 dispensing fee. For brand name drugs, the formula is AWP per unit multiplied by the number of units multiplied by 1.09, plus a \$4.00 dispensing fee. *See* Rule 134.503(a)(2). There is no contract between HCP and Carrier, so Rule 134.503(a)(3) does not apply to the facts of this case.

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. HCP argued that the full amount sought from Carrier for the medications at issue in this proceeding was its U&C charge and that the amount charged to Carrier was calculated in accordance with the formulas found in Rule 134.503. HCP's Reimbursement Manager, DT, provided affidavits that were admitted into evidence. Mr. DT's affidavit dated September 16, 2010 indicates that the U&C charge for the medications dispensed to the injured employee in this

case was calculated in accordance with the formula guidelines in Rule 134.503 for brand-name and generic drugs. HCP also furnished a document from a nationally recognized pharmaceutical reimbursement system (First DataBank, Inc.) that included the AWP effective on August 12, 2008, the date on which the Lexapro 20MG tablets and Hydrocodone – APAP 10-325 tablets were dispensed to Claimant.

Though the evidence indicated that HCP also does some business involving the dispensing of medication in non-workers' compensation automobile liability and personal injury cases, the evidence presented in the hearing strongly indicated that the bulk of HCP's business is to provide medications to injured employees in the workers' compensation system. The evidence presented also revealed that HCP provides this service to customers in all 50 states and the District of Columbia (D.C.). HCP provided documents indicating the charges for the medications at issue in this hearing in the 50 states and D.C. on the date of service of August 12, 2008. These documents indicated significant price variation for these medications depending on the state in which the medications were dispensed. The price charged to Texas customers for these medications was sometimes more and sometimes less than that charged to other consumers in the nation. The prices also varied in some states for non-workers' compensation customers, some of whom paid less for their drugs than workers' compensation customers in Texas. There was also evidence of a discounted price (AWP minus 10%) provided to customers who prepay in cash or by credit card for their medications. The evidence presented was insufficient to adequately explain HCP's pricing variations, so that a concrete U&C charge for the medications at issue in this hearing could be determined.

Based on the evidence presented in the hearing, HCP failed to meet its burden of establishing its U&C charge for the medications at issue in this hearing. Consequently, HCP is not entitled to additional reimbursement in the amount of \$50.29 for Lexapro 20MG Tablet and Hydrocodone – APAP 10-325 Tablet dispensed to Claimant on August 12, 2008 for the compensable injury of _____.

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 the employee of (Employer), and sustained a compensable injury.
 - C. The medications for which additional reimbursement was sought in this case were dispensed as part of the medical care for the compensable injury of _____.
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 August 12, 2008, HCP dispensed 30 units of Lexapro 20MG tablets and a 90-unit supply of Hydrocodone – APAP 10-325 tablets to Claimant as part of the medical care for his compensable injury of _____.
4. The Lexapro 20MG tablet dispensed to Claimant was a brand-name drug.
5. The Hydrocodone – APAP 10-325 tablet dispensed to Claimant was a generic drug.
6. HCP established the AWP of the prescription drugs at issue in this case by providing information from a nationally recognized pharmaceutical reimbursement system (First DataBank, Inc.) effective on August 12, 2008, the date on which the Lexapro 20MG tablets and Hydrocodone – APAP 10-325 tablets were dispensed to Claimant.
7. For the Lexapro 20MG Tablet, the AWP on August 12, 2008, the date on which it was dispensed, was 3.32110 pursuant to the data provided by First DataBank, Inc.
8. For the Hydrocodone – APAP 10-325 Tablet, the AWP on August 12, 2008, the date on which it was dispensed, was 0.67454 pursuant to the data provided by First DataBank, Inc.
9. For the Lexapro 20MG tablets, HCP billed Carrier a total of \$112.60, which reflected the formula amount computed in accordance with Rule 134.503(a)(2)(B) – $3.32210 \times 30 = 99.633$; $99.633 \times 1.09 = 108.60$; $108.60 + 4.00 = 112.60$.
10. Carrier reimbursed HCP a total of \$93.17 for the Lexapro 20MG tablets.
11. For the Hydrocodone – APAP 10-325, HCP billed Carrier a total of \$79.89, which reflected the formula amount computed in accordance with 134.503(a)(2)(A) - $0.67454 \times 90 = 60.7086$; $60.7086 \times 1.25 = 75.89$; $75.89 + 4.00 = 79.89$.
12. Carrier reimbursed HCP a total of \$49.03 for the Hydrocodone – APAP 10-325.
13. There was no negotiated or contracted amount payable pursuant to Rule 134.503(a)(3).
14. HCP failed to prove that its U&C charge for the Lexapro 20MG Tablet and for the Hydrocodone – APAP 10-325 Tablet dispensed on August 12, 2008 was greater than or equal to the reimbursement for the prescription drugs as calculated using the MAR formulas in Rule 134.503.

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 Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is not entitled to additional reimbursement in the amount of \$50.29 for Lexapro 20MG Tablet and Hydrocodone –

APAP 10-325 Tablet dispensed to Claimant on August 12, 2008 for the compensable injury of _____.

DECISION

(Healthcare Provider), Petitioner, is not entitled to additional reimbursement in the amount of \$50.29 for Lexapro 20MG Tablet and Hydrocodone – APAP 10-325 Tablet dispensed to Claimant on August 12, 2008 for the compensable injury of _____.

ORDER

Carrier is not 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
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 14th day of October, 2010.

Jennifer Hopens
Hearing Officer