

MEDICAL CONTESTED CASE HEARING NO. 11049  
M4-09-9291-01, M4-09-9936-01, M4-09-8897-01  
& M4-09-8164-01

**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 consolidated contested case hearing was held on September 29, 2010 to decide the following disputed issues:

In Docket No. (Sequence 18):

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 for Hydrocodone – APAP 10-325 Tablet and Temazepam 30MG Capsule dispensed to Claimant on February 12, 2009 and February 26, 2009, respectively, for the compensable injury of \_\_\_\_\_?

In Docket No. (Sequence 19):

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 for Temazepam 30MG Capsule dispensed to Claimant on March 23, 2009 for the compensable injury of \_\_\_\_\_?

In Docket No. (Sequence 20):

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 for Lyrica 200MG Capsule and Baclofen 10MG Tablet dispensed to Claimant on March 6, 2009 and March 12, 2009, respectively, and for Hydrocodone – APAP 10-325 Tablet dispensed on March 12, 2009 for the compensable injury of \_\_\_\_\_?

In Docket No. (Sequence 21):

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 for Hydrocodone – APAP 10-325 Tablet and Temazepam – APAP 10-325 Tablet, dispensed on August 15, 2008 and February 5, 2009, respectively, 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 consolidated case were dispensed as part of the medical care for Claimant's compensable injury of \_\_\_\_\_. The following table serves to outline the overall dispute between HCP and Carrier in this case:

Date Dispensed	Medication / No. of Units	HCP Charge to Carrier	Carrier Reimbursement to HCP	Amount in Dispute
08/15/2008	Hydrocodone-APAP 10-325 Tablet/ 180 Units	\$155.77	\$94.56	\$61.21
02/05/2009	Temazepam 30 MG Capsule/30 Units	\$34.34	\$21.70	\$12.64
02/12/2009	Hydrocodone-APAP 10-325 Tablet/ 180 Units	\$155.77	\$94.56	\$61.21
02/26/2009	Temazepam 30MG / 30 Units	\$34.34	\$21.70	\$12.64
03/06/2009	Lyrica 200MG Capsule / 90 Units	\$266.65	\$220.36	\$46.29
03/12/2009	Baclofen 10MG Tablet / 270 Units	\$192.53	\$116.62	\$75.91
03/12/2009	Hydrocodone-APAP 10-325 Tablet/ 180 Units	\$155.77	\$94.56	\$61.21
03/23/2009	Temazepam 30MG Capsule/30 Units	\$34.34	\$21.70	\$12.64

After HCP's requests for full payment were 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 \$343.75 from Carrier.

A "Medical Fee Dispute Resolution Findings and Decision" was issued by an MFDR Officer in each of the following four disputes:

In M4-09-8897-01 (Docket No. 18):

Date Dispensed	Medications	Amount in Dispute	Amount of Additional Reimbursement Ordered Paid to HCP
02/12/2009	Hydrocodone-APAP	\$61.21	\$0.00

	10-325 Tablet		
02/26/2009	Temazepam 30MG	\$12.64	\$0.00

In M4-09-9291-01 (Docket No. 19):

Date Dispensed	Medications	Amount in Dispute	Amount of Additional Reimbursement Ordered Paid to HCP
03/23/2009	Temazepam 30MG Capsule	\$12.64	\$0.00

In M4-09-9936-01 (Docket No. 20):

Date Dispensed	Medications	Amount in Dispute	Amount of Additional Reimbursement Ordered Paid to HCP
03/06/2009	Lyrica 200MG Capsule	\$46.29	\$0.00
03/12/2009	Baclofen 10MG Tablet	\$75.91	\$0.00
03/12/2009	Hydrocodone-APAP 10-325 Tablet	\$61.21	\$0.00

In M4-09-8164-01 (Docket No. 21):

Date Dispensed	Medications	Amount in Dispute	Amount of Additional Reimbursement Ordered Paid to HCP
08/15/2008	Hydrocodone-APAP 10-325 Tablet	\$61.21	\$0.00
02/05/2009	Temazepam 30 MG Capsule	\$12.64	\$0.00

The rationale behind each of the above-cited MFDR decisions was that the Division was not provided with sufficient information to determine HCP's usual and customary (U&C) charge for the prescription medications at issue. Following the adverse decisions from MFDR, HCP appealed to a medical contested case hearing and the disputes were consolidated for purposes of judicial economy into one proceeding.

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 also in line 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 15, 2010 indicates that the U&C charge for the medications at issue in this proceeding 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 for the medications at issue in this hearing on the dates dispensed. The following table reflects that information:

Date(s) Dispensed	Medication / No. of Units	AWP
08/15/2008, 02/12/2009,	Hydrocodone-APAP 10-325	.67454

03/12/2009	Tablet/ 180 Units	
02/05/2009, 03/23/2009	Temazepam 30MG Capsule/30 Units	.80900
03/06/2009	Lyrica 200MG Capsule / 90 Units	2.67733
03/12/2009	Baclofen 10MG Tablet / 270 Units	.55860

The evidence presented in the hearing strongly indicated that HCP dispenses pharmaceutical drugs to customers in all 50 states and the District of Columbia (D.C.) and that its business is primarily focused on providing medications to injured employees in the workers' compensation system. The evidence also indicated, however, that a small percentage of HCP's business includes dispensing medication in non-workers' compensation automobile liability and personal injury cases.

HCP provided documentation indicating the charges for the medications at issue in this hearing in the 50 states and D.C. on the dates of service in question. 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 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 the additional reimbursement it seeks.

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 15, 2008, February 12, 2009, and March 12, 2009, HCP dispensed 180-unit supplies of Hydrocodone – APAP 10-325 tablets to Claimant as part of the medical care for his compensable injury of \_\_\_\_\_.
4. On February 5, 2009 and March 23, 2009, HCP dispensed 30-unit supplies of Temazepam 30MG capsules to Claimant as part of the medical care for his compensable injury of \_\_\_\_\_.
5. On March 6, 2009, HCP dispensed 90 units of Lyrica 200MG Capsule to Claimant as part of the medical care for his compensable injury of \_\_\_\_\_.
6. On March 12, 2009, HCP dispensed 270 units of Baclofen 10MG Tablet to Claimant as part of the medical care for his compensable injury of \_\_\_\_\_.
7. Hydrocodone-APAP 10-325 Tablet, Temazepam 30 MG Capsule, and Baclofen 10MG Tablet dispensed to Claimant were generic drugs.
8. Lyrica 200MG Capsule dispensed to Claimant was a brand-name drug.
9. HCP established the AWP of the prescription medication at issue in this case by providing information from a nationally recognized pharmaceutical reimbursement system (First DataBank, Inc.) effective on the dates on which the medication at issue was dispensed to Claimant.
10. For the Hydrocodone-APAP 10-325 Tablet, the AWP on August 15, 2008, February 12, 2009, and March 12, 2009, the dates on which it was dispensed, was .67454 pursuant to the data provided by First DataBank, Inc.
11. For the Temazepam 30MG Capsule, the AWP on February 5, 2009 and March 23, 2009, the dates on which it was dispensed, was .80900 pursuant to the data provided by First DataBank, Inc.
12. For the Baclofen 10MG Tablet, the AWP on March 12, 2009, the date on which it was dispensed, was .55860 pursuant to the data provided by First DataBank, Inc.
13. For the Lyrica 200MG Capsule, the AWP on March 6, 2009, the date on which it was dispensed, was 2.67733 pursuant to the data provided by First DataBank, Inc.
14. For each 180-unit supply of Hydrocodone-APAP 10-325 Tablet, HCP billed Carrier a total of \$155.77, which reflected the formula amount computed in accordance with Rule 134.503(a)(2)(A) –  $0.67454 \times 180 = 121.4172$ ;  $121.4172 \times 1.25 = 151.77$ ;  $151.77 + 4.00 = 155.77$ .
15. For each 180-unit supply of Hydrocodone-APAP 10-325 Tablet, Carrier reimbursed HCP \$94.56.
16. For each 30-unit supply of Temazepam 30MG Capsule, HCP billed Carrier a total of \$34.34, which reflected the formula amount computed in accordance with 134.503(a)(2)(A) -  $0.80900 \times 30 = 24.27$ ;  $24.27 \times 1.25 = 30.34$ ;  $30.34 + 4.00 = 34.34$ .

17. For each 30-unit supply of Temazepam 30MG Capsule, Carrier reimbursed HCP a total of \$21.70.
18. For the 270-unit supply of Baclofen 10MG Tablet, HCP billed Carrier a total of \$192.53, which reflected the formula amount computed in accordance with 134.503(a)(2)(A) -  $.55860 \times 270 = 150.822$ ;  $150.822 \times 1.25 = 188.53$ ;  $188.53 + 4.00 = 192.53$ .
19. For the 270 units of Baclofen 10MG Tablet, Carrier reimbursed HCP a total of \$116.62.
20. For the 90 units of Lyrica 200MG Capsule, HCP billed Carrier a total of \$266.65, which reflected the formula amount computed in accordance with 134.503(a)(2)(B) -  $2.67733 \times 90 = 240.9597$ ;  $240.9597 \times 1.09 = 262.65$ ;  $262.65 + 4.00 = 266.65$ .
21. For the 90 units of Lyrica 200MG Capsule, Carrier reimbursed HCP a total of \$220.36.
22. There was no negotiated or contracted amount payable pursuant to Rule 134.503(a)(3).
23. HCP failed to prove that its U&C charge for the medications at issue in this proceeding on the dates dispensed 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.

In Docket No. (Sequence 18):

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 for Hydrocodone – APAP 10-325 Tablet and Temazepam 30MG Capsule dispensed to Claimant on February 12, 2009 and February 26, 2009, respectively, for the compensable injury of \_\_\_\_\_.

In Docket No. (Sequence 19):

4. 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 for Temazepam 30MG Capsule dispensed to Claimant on March 23, 2009 for the compensable injury of \_\_\_\_\_.

In Docket No. Sequence (20):

5. 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 for Lyrica 200MG Capsule and Baclofen 10MG Tablet dispensed to Claimant on March 6, 2009 and March 12, 2009, respectively, and for Hydrocodone –

APAP 10-325 Tablet dispensed on March 12, 2009 for the compensable injury of \_\_\_\_\_.

In Docket No. (Sequence 21):

6. 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 for Hydrocodone – APAP 10-325 Tablet and Temazepam – APAP 10-325 Tablet, dispensed on August 15, 2008 and February 5, 2009, respectively, for the compensable injury of \_\_\_\_\_.

### **DECISION**

In Docket No. (Sequence 18):

(Healthcare Provider), Petitioner, is not entitled to additional reimbursement for Hydrocodone – APAP 10-325 Tablet and Temazepam 30MG Capsule dispensed to Claimant on February 12, 2009 and February 26, 2009, respectively, for the compensable injury of \_\_\_\_\_.

In Docket No. (Sequence 19):

(Healthcare Provider), Petitioner, is not entitled to additional reimbursement for Temazepam 30MG Capsule dispensed to Claimant on March 23, 2009 for the compensable injury of \_\_\_\_\_.

In Docket No. (Sequence 20):

(Healthcare Provider), Petitioner, is not entitled to additional reimbursement for Lyrica 200MG Capsule and Baclofen 10MG Tablet dispensed to Claimant on March 6, 2009 and March 12, 2009, respectively, and for Hydrocodone – APAP 10-325 Tablet dispensed on March 12, 2009 for the compensable injury of \_\_\_\_\_.

In Docket No. (Sequence 21):

(Healthcare Provider), Petitioner, is not entitled to additional reimbursement for Hydrocodone – APAP 10-325 Tablet and Temazepam – APAP 10-325 Tablet, dispensed on August 15, 2008 and February 5, 2009, respectively, for the compensable injury of \_\_\_\_\_.

### **ORDER**

In Docket Nos. (Sequence 18), (Sequence 19), (Sequence 20), and (Sequence 21):

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