

MEDICAL CONTESTED CASE HEARING NO 111402  
M4-10-1443-01

**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 May 31, 2011 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) is not entitled to \$46.94 for Cyclobenzaprine 10MG Tablet (90 Units) dispensed on May 29, 2008 and \$521.76 for Hydrocodone/APAP 10/500 TAB (210 Units) dispensed on May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, December 17, 2008, January 22, 2009, and February 21, 2009?

The hearing officer amended the issue as follows to reflect what was actually litigated by the parties:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider) is not entitled to \$46.94 for Cyclobenzaprine 10MG Tablet (90 Units) dispensed on May 29, 2008 and \$429.60 for Hydrocodone/APAP 10/500 TAB (210 Units) dispensed on May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, and December 17, 2008, and \$92.16 for Hydrocodone/APAP 10/500 TAB (180 Units) on January 22, 2009 and February 21, 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 health care reasonably required for Claimant's compensable injury of (Date of Injury).

The sole issue in dispute in this hearing concerns whether (Healthcare Provider), (Healthcare Provider) is entitled to additional reimbursement for the dispensed 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	(Healthcare Provider) Charge to Carrier	Carrier Reimbursement to (Healthcare Provider)	Amount in Dispute
05/29/2008	Cyclobenzaprine 10MG Tablet / 90 Units	\$120.00	\$73.06	\$46.94
05/29/2008, 06/26/2008, 07/25/2008, 08/27/2008, 09/25/2008, 10/21/2008, 11/21/2008, 12/17/2008	Hydrocodone/APAP 10/500 TAB / 210 Units	\$1,095.20 (\$136.90 x 8)	\$665.60 (\$83.20 x 8)	\$429.60 (\$53.70 x 8)
01/22/2009, 02/21/2009	Hydrocodone/APAP 10/500 TAB / 180 Units	\$235.80 (\$117.90 x 2)	\$143.64 (\$71.82 x 2)	\$92.16 (\$46.08 x 2)

The evidence presented in the hearing indicated that the reimbursement 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 additional reimbursement totaling \$568.70 from Carrier.

On December 17, 2010, the Division's MFDR Officer issued a decision ("Medical Fee Dispute Resolution Findings and Decision" or MFDRFD) holding that (Healthcare Provider) was not entitled to the additional reimbursement at issue from Carrier. A fair reading of the MFDRFD indicates that the Division was not provided with sufficient evidence to substantiate (Healthcare Provider)'s usual and customary (U&C) charge for the medications at issue. Following the adverse decision from MFDR, (Healthcare Provider) requested a medical contested case hearing (MCCH) to resolve the fee question in this case.

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. *See* Rule 134.503(a)(2)(A). The evidence presented in the hearing revealed that the prescription medications at issue in this case are generic drugs. The evidence also revealed that there is no contract between (Healthcare Provider) and 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 contention 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.

(Healthcare Provider) presented evidence in the hearing to indicate that, according to a document with Rx30 letterhead, the AWP for Cyclobenzaprine 10MG Tablet on the May 29, 2008 dispensing date was 1.0311. The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for this medication:

$$\begin{aligned} \$1.0311 \text{ (AWP)} \times 90 \text{ (\# of Units)} &= \$92.799 \text{ (rounded up to } \$92.80); \$92.80 \times \\ 1.25 &= \$116.00 \end{aligned}$$

$$\$116.00 + \$4.00 \text{ (dispensing fee)} = \$120.00$$

Following a careful review of the evidence presented, (Healthcare Provider) established by a preponderance of the evidence that it is entitled to additional reimbursement in the amount of \$46.94 for the Cyclobenzaprine. The evidence, particularly the (Healthcare Provider) dispensing records for the period of May 27, 2008 through June 5, 2008 for this medication, was persuasive in showing that (Healthcare Provider)'s U&C charge for this medication is the same as the amount elicited from the Rule 134.503(a)(2)(A) formula calculation (\$120.00). As the evidence indicated that the amount billed for Cyclobenzaprine 10MG Tablet (90 Units) dispensed on May 29, 2008 was its U&C charge, (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$46.94.

With regard to the Hydrocodone/APAP 10/500 TAB, (Healthcare Provider) presented a document with Rx30 letterhead indicating that the AWP for this medication on the dates at issue was 0.5065. As illustrated in the table on p. 2, above, the amount (Healthcare Provider) charged Carrier for 210 units of the medication was \$136.90 and, for 180 units, it charged Carrier \$117.90.

The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for this medication for 210 and 180 units, respectively:

$\$0.5065 \text{ (AWP)} \times 210 \text{ (\# of Units)} = \$106.365 \text{ (rounded up to } \$106.37\text{); } \$106.37 \times 1.25 = \$132.9625 \text{ (rounded down to } \$132.96\text{)}$

$\$132.96 + \$4.00 \text{ (dispensing fee)} = \$136.96$

$\$0.5065 \text{ (AWP)} \times 180 \text{ (\# of Units)} = \$91.17\text{; } \$91.17 \times 1.25 = \$113.9625 \text{ (rounded down to } \$113.96\text{)}$

$\$113.96 + \$4.00 \text{ (dispensing fee)} = \$117.96$

Though there was some indication that (Healthcare Provider) utilized a slightly lower AWP in its calculations or that it may have rounded down the overall product of the Rule 134.503(a)(2)(A) MAR calculation, the dispensing records from (Healthcare Provider) for this medication for the period from May 27, 2008 through February 27, 2009 were persuasive in establishing that its U&C charge for 210 units of the drug was \$136.90 and \$117.90 for 180 units during the period at issue. As the evidence was sufficient for (Healthcare Provider) to establish its U&C charge for the Hydrocodone/APAP 10/500 TAB and that such U&C was the lesser of the Rule 134.503(a)(2)(A) MAR formula, (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$521.76.

Though the evidence revealed that (Healthcare Provider) does offer a discount to customers who pay for their medications in cash, the evidence also indicated that the percentage of such customers is an extremely small one, approximately .0005% to .0025% 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 to the following facts:
  - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On (Date of Injury), Claimant was the employee of (Employer).
  - C. Claimant sustained a compensable injury on (Date of Injury).
  - D. On (Date of Injury), Employer subscribed to a policy of workers' compensation insurance through Texas Mutual Insurance Company.
  - E. The prescription medication at issue in this case was health care reasonably required for Claimant's compensable injury.

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 May 29, 2008, (Healthcare Provider) dispensed 90 units of Cyclobenzaprine 10MG Tablet to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$120.00 for this medication.
4. On May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, and December 17, 2008, (Healthcare Provider) dispensed 210 units of Hydrocodone/APAP 10/500 TAB to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$1,095.20 (\$136.90 x 8) for this medication.
5. On January 22, 2009 and February 21, 2009, (Healthcare Provider) dispensed 180 units of Hydrocodone/APAP 10/500 TAB to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$235.80 (\$117.90 x 2) for this medication.
6. Cyclobenzaprine 10MG Tablet and Hydrocodone/APAP 10/500 TAB are generic drugs.
7. There was no negotiated or contracted amount payable pursuant to Rule 134.503(a)(3).
8. (Healthcare Provider) established the AWP of the prescription drugs 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.
9. For the Cyclobenzaprine 10MG Tablet, the AWP on May 29, 2008, the date on which it was dispensed to Claimant, was 1.0311 pursuant to the data furnished by Rx30.
10. For the Hydrocodone/APAP 10/500 TAB, the AWP on the dates of service in dispute (May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, December 17, 2008, January 22, 2009 and February 21, 2009) was .5065 pursuant to the data furnished by Rx30.
11. (Healthcare Provider)'s U&C charge for 90 units of Cyclobenzaprine 10MG Tablet on May 29, 2008 was \$120.00.
12. (Healthcare Provider)'s U&C charge for 210 units of Hydrocodone/APAP 10/500 TAB on the dates of service in dispute (May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, and December 17, 2008) was \$136.90.

13. (Healthcare Provider)'s U&C charge for 180 units of Hydrocodone/APAP 10/500 TAB on the dates of service in dispute (January 22, 2009 and February 21, 2009) was \$117.90.
14. For the Cyclobenzaprine 10MG Tablet dispensed on May 29, 2008, Carrier reimbursed (Healthcare Provider) a total of \$73.06.
15. For the 210 units of Hydrocodone/APAP 10/500 TAB dispensed on May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, and December 17, 2008, Carrier reimbursed (Healthcare Provider) a total of \$665.60 (\$83.20 x 8).
16. For the 180 units of Hydrocodone/APAP 10/500 TAB dispensed on January 22, 2009 and February 21, 2009, Carrier reimbursed (Healthcare Provider) a total of \$143.64 (\$71.82 x 2).
17. The MAR for 90 units of Cyclobenzaprine 10MG Tablet on May 29, 2008 was \$120.00, which is equal to the amount elicited from the Rule 134.503(a)(2)(A) formula calculation.
18. The MAR for 210 units of Hydrocodone/APAP 10/500 TAB on the dates of service in dispute (May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, and December 17, 2008) was \$136.90, which is less than the amount elicited from the Rule 134.503(a)(2)(A) formula calculation.
19. The MAR for 180 units of Hydrocodone/APAP 10/500 TAB on the dates of service in dispute (January 22, 2009 and February 21, 2009) was \$117.90, which is less than the amount elicited from the Rule 134.503(a)(2)(A) 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 contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider) is not entitled to \$46.94 for Cyclobenzaprine 10MG Tablet (90 Units) dispensed on May 29, 2008, \$429.60 for Hydrocodone/APAP 10/500 TAB (210 Units) dispensed on May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, and December 17, 2008, and \$92.16 for Hydrocodone/APAP 10/500 TAB (180 Units) on January 22, 2009 and February 21, 2009.

## **DECISION**

(Healthcare Provider) is entitled to additional reimbursement in the amount of \$46.94 for Cyclobenzaprine 10MG Tablet (90 Units) dispensed on May 29, 2008, \$429.60 for Hydrocodone/APAP 10/500 TAB (210 Units) dispensed on May 29, 2008, June 26, 2008, July 25, 2008, August 27, 2008, September 25, 2008, October 21, 2008, November 21, 2008, and December 17, 2008, and \$92.16 for Hydrocodone/APAP 10/500 TAB (180 Units) on January 22, 2009 and February 21, 2009.

## **ORDER**

Carrier is liable for the additional reimbursement 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 10th day of June, 2011.

Jennifer Hopens  
Hearing Officer