

MEDICAL CONTESTED CASE HEARING NO 12038  
M4-10-3792-01

**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 24, 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), Petitioner, is not entitled to additional reimbursement for the compensable injury of (Date of Injury) in the amount of \$154.35 for 90 units of Hydrocod/APap 10/325 Tablet dispensed to Claimant on September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009 and February 4, 2010?

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

HCP is an in-house pharmacy, providing medication to injured parties under workers' compensation law for the rehabilitation facility, Functional Restoration Services. The following table serves to outline the overall dispute between HCP and Carrier in this case:

**Table 1**

Date(s) of Service (DOS)	Medication / No. of Units	HCP Charge to Carrier	Carrier Reimbursement to HCP	Amount in Dispute
09/17/09 10/15/09 11/12/09 12/10/09 02/04/10	Hydrocodone/AP AP 10/325 TAB/90 units	\$399.50 (\$79.90 x 5)	\$245.15 (\$49.03 x 5 )	\$154.35 (\$30.87 x 5)

The evidence presented in the hearing indicated that the reimbursement Carrier provided to HCP was based on Carrier's calculation of a reasonable and customary fee for the 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 the remaining reimbursement totaling \$154.35 from Carrier.

On December 28, 2010 the Division's MFDR Officer issued a decision ("Medical Fee Dispute Resolution Findings and Decision" or MFDRFD) holding that HCP was not entitled to additional reimbursement at issue from Carrier. The rationale behind the decision was that the Division was not provided with sufficient evidence to substantiate HCP's usual and customary (U&C) charge for the medications at issue. Following the adverse decision from MFDR, HCP requested a medical contested case hearing 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. 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, RFR, 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 establish its entitlement to the additional reimbursement it seeks. HCP's pharmacy manager, TH, provided an affidavit that was admitted into evidence in the hearing. Mr. H's April 29, 2011 affidavit indicates that HCP makes no distinction between AWP and its U&C charges to avoid any discrepancy. HCP also furnished literature and pricing information from RX30, a professional billing and pricing hardware and software program that HCP utilizes. The evidence included an e-mail from MP, an employee of RX30, who indicated that RX30 does not calculate AWP itself, but, rather, it obtains current 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.

HCP presented evidence from the RX30 computer program that the AWP for Hydrocodone/APAP 10/325 Tablet on the dispensing dates of September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009, and February 4, 2010 was 0.675. The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for this medication:

$$\begin{aligned} & \$0.6750 \text{ (AWP)} \times 90 \text{ (\# of Units)} \times 1.25 + \$4.00 \text{ (dispensing fee)} = \$79.9375 \\ & \text{(rounded to } \$79.94) \end{aligned}$$

The evidence, particularly the HCP dispensing records for the period of September 15, 2009 through February 10, 2010 for this medication, was persuasive in showing that HCP's U&C charge for this medication (\$79.90) is \$0.04 less than the amount elicited from the Rule 134.503(a)(2)(A) formula calculation (\$79.94). Therefore HCP is found to be entitled to additional reimbursement in the amount of \$154.35 (\$30.87 x 5) for Hydrocodone/APAP 10/325 (90 units) dispensed on September 17, 2009, October 15, 2009, November 12, 2009 December 10, 2009, and February 4, 2010.

Though the evidence indicated that HCP did offer a discount to a very limited number of customers who pay for their medications in cash, the affidavit from Mr. H, dated April 1, 2011, persuasively explained that this amount was statistically insignificant (less than 0.0025%).

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 (Date of Injury), Claimant was the employee of (Employer), Employer, and sustained a compensable injury.
  - C. On (Date of Injury), Employer subscribed to a policy of workers' compensation insurance through Texas Mutual Insurance Company.
  - D. The medications for which additional reimbursement was sought in this case were dispensed as part of the medical care for the compensable injury of (Date of Injury).
  - E. (Healthcare Provider) has no negotiated or contractual pharmacy fee agreement with Texas Mutual Insurance Company payable pursuant to Rule 134.503(a)(3).
  - F. The preponderance of the evidence is not contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is entitled to reimbursement for the compensable injury of (Date of Injury) in the amount of \$301.65 for 90 units of Gabapentin 300 MG Capsule, dispensed on September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009 and February 4, 2010, which has been paid by the Carrier.
  - G. The preponderance of the evidence is not contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is entitled to reimbursement for the compensable injury of (Date of Injury) in the amount of \$107.80 for 90 units of Methocarbamol 750 MG Tablet, dispensed on September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009 and February 4, 2010, which has been paid by the Carrier.
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. The medication for which additional reimbursement was sought in this case was generic.
4. On September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009, and February 4, 2010, HCP dispensed 90 units of Hydrocodone/APAP 10/325 Tablet to Claimant for his compensable injury of (Date of Injury); HCP billed Carrier a total of \$399.50 (\$79.90 x 5) for this medication.
5. HCP 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.).
6. For the Hydrocodone/APAP 10/325 Tablet, the AWP on the dates of service in dispute (September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009, and February 4, 2010) was 0.675 pursuant to the data furnished by RX30.
7. HCP' U&C charge for 90 units of Hydrocodone/APAP 10/325 Tablet on the dates of service in dispute (September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009, and February 4, 2010) was \$79.90.
8. For the Hydrocodone/APAP 10/325 Tablet, dispensed on September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009, and February 4, 2010, Carrier reimbursed HCP a total of \$245.15 (\$49.03 x 5).
9. The MAR for 90 units of Hydrocodone/APAP 10/325 Tablet, dispensed on the dates of service in dispute (September 17, 2009, October 15, 2009, November 12, 2009, December 10, 2009, and February 4, 2010) was \$79.90 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 additional reimbursement in the amount of \$154.35 for 90 units of Hydrocod/APap 10/325 Tablet dispensed to Claimant on September 17, 2009, October 15, 2009, November 12, 2009 December 10, 2009, and February 4, 2010.

**DECISION**

(Healthcare Provider) is entitled to additional reimbursement in the amount of \$154.35 for 90 units of Hydrocod/Apap 10/325 Tablet dispensed to Claimant on September 17, 2009, October 15, 2009, November 12, 2009 December 10, 2009, and February 4, 2010.

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

Signed this 29th day of June, 2011.

Judy L. Ney  
Hearing Officer