

MEDICAL CONTESTED CASE HEARING NO. 13041

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 medical contested case hearing was held on May 23, 2011¹ with Hearing Officer KB presiding 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 \$89.56 for Baclofen 20MG TABLET (90 Units) for dates of service March 17, 2010 and April 14, 2010?

Hearing Officer B left Division employment in November 2012. As a decision in this matter was pending at that time, the undersigned hearing officer was assigned to review the record and issue a decision based on the evidence presented. The undersigned hearing officer reopened the record on December 27, 2012 after noticing a mathematical calculation error in the amount in dispute, above. The hearing officer contacted the parties in order to propose amending the amount in dispute in this case to correct that error, as well as to provide the parties with an opportunity to file additional written arguments. The record closed effective January 9, 2013. After neither party offered any objection to the hearing officer's proposed amendment of the amount in dispute in the issue, that amount was changed from "\$89.56" to "\$89.78" in order to reflect the correct amount at issue.

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.

¹ This fee dispute was heard in a consolidated medical contested case hearing along with the fee disputes in (Sequence 03) and (Sequence 04).

BACKGROUND INFORMATION

The petitioner in this case is (Healthcare Provider), which dispenses medications within a medical facility and whose customer base is almost exclusively workers' compensation patients.

This medical contested case hearing concerned whether (Healthcare Provider) is entitled to additional reimbursement for medication – Baclofen – it dispensed to Claimant for treatment of his (Date of Injury) compensable injury.

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
03/17/2010, 04/14/2010	Baclofen 20MG TABLET / 90 Units	\$230.00 (\$115.00 x 2)	\$140.22 (\$70.11 x 2)	\$89.78 (\$44.89 x 2)

The evidence presented in the hearing indicated that the reimbursement amount Carrier paid to (Healthcare Provider) in this case for the Baclofen dispensed on March 17, 2010 and April 14, 2010 was based on Carrier's calculation of a reasonable and customary fee for the medication. After (Healthcare Provider)'s requests for reconsideration of the reimbursement amounts for Baclofen were denied by Carrier, (Healthcare Provider) sought relief through the Division's Medical Fee Dispute Resolution (MFDR) section in order to obtain additional reimbursement for the medication from Carrier.

On December 16, 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 additional reimbursement for Baclofen 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 this medication. 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 adopted reimbursement methodology for prescription drugs in Rule 134.503. The current version of this rule (“Pharmacy Fee Guideline”) went into effect on October 23, 2011.

Pursuant to the version of Rule 134.503 in effect at the time of the dates of service at issue in this case², the maximum allowable reimbursement (MAR) for prescription drugs was 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), then in effect. The evidence presented in the hearing revealed that Baclofen is a generic drug. The evidence also revealed that there is no contract between (Healthcare Provider) and Carrier, so Rule 134.503(a)(3), then in effect, does not apply to the facts of this case.

On December 11, 2003, Richard F. Reynolds, 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

² The version of Rule 134.503 (“Reimbursement Methodology”) applicable to this case was in effect from March 14, 2004 to October 22, 2011.

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, TH, provided an affidavit that was admitted into evidence in the May 23, 2011 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 used by (Healthcare Provider). The evidence presented in the hearing included an e-mail from MP, 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. 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, equating to less than .0025% of (Healthcare Provider)'s quarterly business.

(Healthcare Provider) presented evidence in the hearing to indicate that, according to a document with Rx30 letterhead, the AWP for Baclofen 20MG Tablet on the March 17, 2010 and April 14, 2010 dispensing dates was 0.9867. The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for this medication:

$$\begin{aligned} \$0.9867 \text{ (AWP)} \times 90 \text{ (# of Units)} &= \$88.803 \text{ (rounded down to} \\ &\$88.80); \$88.80 \times 1.25 = \$111.00 \end{aligned}$$

$$\$111.00 + \$4.00 \text{ (dispensing fee)} = \$115.00$$

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 \$89.78 for the Baclofen dispensed on dates of service March 17, 2010 and April 14, 2010. The evidence, particularly the (Healthcare Provider) dispensing records for the period of February 4, 2010 through May 26, 2010 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 (\$115.00). As the evidence indicated that the amount billed for Baclofen 20MG Tablet (90 Units) dispensed on March 17, 2010 and April 14, 2010 was its U&C charge, (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$89.78.

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 at the May 23, 2011 hearing:
 - 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 an employee of (Employer).
 - C. Claimant sustained a compensable injury on (Date of Injury).
 - D. The Medical Fee Dispute Resolution Officer determined that the provider is not entitled to reimbursement in the amount described by the hearing officer in the issues.
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 version of Rule 134.503 in effect from March 14, 2004 through October 22, 2011 applies in this case.
4. On March 17, 2010, (Healthcare Provider) dispensed 90 units of Baclofen 20MG Tablet to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$115.00 for this medication.
5. On April 14, 2010, (Healthcare Provider) dispensed 90 units of Baclofen 20MG Tablet to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$115.00 for this medication.
6. Baclofen 20MG Tablet is a generic drug.
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 drug 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 Baclofen 20MG Tablet, the AWP on March 17, 2010 and April 14, 2010, the dates on which it was dispensed to Claimant, was 0.9867 pursuant to the data furnished by Rx30.
10. (Healthcare Provider)'s usual and customary (U&C) charge for 90 units of Baclofen 20MG Tablet on the dates of service in dispute (March 17, 2010 and April 14, 2010) was \$115.00.

11. For the 90 units of Baclofen 20MG Tablet dispensed on March 17, 2010, Carrier reimbursed (Healthcare Provider) a total of \$70.11.
12. For the 90 units of Baclofen 20MG Tablet dispensed on April 14, 2010, Carrier reimbursed (Healthcare Provider) a total of \$70.11.
13. The maximum allowable reimbursement (MAR) for 90 units of Baclofen 20MG Tablet on March 17, 2010 was \$115.00, which is equal to the amount elicited from the Rule 134.503(a)(2)(A) formula calculation.
14. The MAR for 90 units of Baclofen 20MG Tablet on April 14, 2010 was \$115.00, which is equal to 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 for the compensable injury of (Date of Injury) in the amount of \$89.78 for Baclofen 20MG TABLET (90 Units) for dates of service March 17, 2010 and April 14, 2010.

DECISION

(Healthcare Provider), Petitioner, is entitled to additional reimbursement for the compensable injury of (Date of Injury) in the amount of \$89.78 for Baclofen 20MG TABLET (90 Units) for dates of service March 17, 2010 and April 14, 2010.

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 O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 17th day of January, 2013.

Jennifer Hopens
Hearing Officer