

Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

Vista Medical Center Hospital

Respondent Name

JC Penney Corporation, Inc.

MFDR Tracking Number

M4-05-2171-02

Carrier's Austin Representative

Box Number 19

DWC Date Received

November 23, 2004

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
December 2, 2003 to December 3, 2003	Inpatient Hospital Services	\$32,664.91	\$649.00

Requestor's Position

Requestor's Position Summary: "Carrier did not provide the proper payment exception code in this instance which is in violation of the Texas Administrative Code."

Requestor's Position Summary Dated October 28, 2004: "...TWCC Rule 134.401 requires payment of 75% of audited charges for billed charges that reach the stop-loss threshold of \$40,000.00."

Amount in Dispute: \$32,664.91

Respondent's Position

Respondent's Position Summary Dated December 13, 2004: "Requestor billed a total of \$51,482.55 for a two day stay. The Requestor asserts it is entitled to reimbursement in the amount of \$38,611.91 which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement and has not otherwise properly calculated the audited charges."

Respondent's Supplemental Position Summary Dated November 24, 2015: "Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate Requestor's claim of entitlement to additional payment, Requestor failed to sustain its burden of proving entitlement to the stop loss exception."

Respondent's Supplemental Position Summary Dated March 09, 2016: "The Requestor believes the reasonable resolution of these issues, and the one compelled by the Labor Code, Division rules and policies, and the Third Court of Appeals opinions, is to find the post SOAH *en banc* decision refund issue is not ripe for determination, and reserve the issue of the carriers' right to a refund until after a final determination has been made of the amount due for each hospital admission. Dispute resolution or compliance actions by the Division would be initiated upon request or upon notification of any failure to refund as circumstances require."

Response Submitted by: Flahive, Ogden & Latson

Findings and Decision

Authority

This medical fee dispute is decided according to [Texas Labor Code \(TLC\) §413.031](#) and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation (DWC).

Statutes and Rules

1. [28 Texas Administrative Code \(TAC\) §133.305, 27 Texas Register 12282](#), applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical disputes.
2. [28 TAC §133.304, 17 Texas Register 1105](#), effective February 20, 1992, sets out the provisions for insurance carriers to dispute and audit medical bills.
3. [28 TAC §133.307, 27 Texas Register 12282](#), applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
4. [28 TAC §134.1, 27 Texas Register 4047](#), effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable Division fee guideline.
5. [28 TAC §134.401, 22 Texas Register 6246](#), effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

Denial Reasons

The insurance carrier denied the payment for the disputed services with the following claim adjustment codes:

- 1 – The charges for this hospitalization have reduced based on the fee schedule allowance
- 2 – The charges for this procedure exceeds the fee schedule or usual and customary allowance

Dispute History

- This dispute was originally decided on June 3, 2005.
- The original dispute decision was appealed to District Court.
- The 345th Judicial District remanded the dispute to the division pursuant to an agreed order of remand D-1-GN-08-002269 dated July 10, 2015.
- As a result of the remand order, the dispute was re-docketed at the DWC's medical fee dispute resolution section.
- M4-05-2171-02 is hereby reviewed.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually costly services?
3. Did the admission in dispute involve unusually extensive services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 TAC §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 TAC §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Subsequent decisions concerning this issue include the State Office of Administrative Hearings (SOAH) decision under docket 454-12-1961.M4 *Vista Medical Center Hospital, v. Carriers* issued June 24, 2019, and the Third Court of Appeals December 28, 2022 opinion in *Vista Community Medical Center, LLP, v. Carriers*. These decisions concurred with the

Third Court of Appeals' November 13, 2008 opinion on eligibility for reimbursement under the Stop-Loss Exception which required that total audited charges exceed \$40,000 and that an admission involve unusually costly and unusually extensive services.

The requestor and respondent in this dispute were given an opportunity to supplement the original MDR submissions after the 3rd Court of Appeals Decision. Both parties submitted a supplemental position as noted above. These positions were exchanged among the parties as appropriate. Documentation filed by the requestor and respondent to date is considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, which the SOAH decision and order 454-12-1961.M4 issued June 24, 2019, and the Third Court of Appeals December 28, 2022 opinion concurred, the DWC will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually costly; and whether the admission and disputed services **in this case** are unusually extensive. 28 TAC §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold..." The opinion of the Third Court of Appeals states that the stop loss exception "...was meant to apply on a case-by-case basis in relatively few cases." 28 TAC §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 TAC §134.401(c)(6)(A)(i) states, "to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, 28 TAC §134.401(c)(6)(A)(v) states that "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed." Review of the explanation of benefits issued by the respondent finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore, the audited charges equal \$51,482.55. The DWC concludes that the total audited charges exceed \$40,000.00.
2. 28 TAC §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The three opinions noted above concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services.

The requestor's position statement does not address how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The DWC concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).

3. 28 TAC §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). 28 TAC §134.401(c)(6)(A)(ii) states that "this stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission."

The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for

reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved ... unusually extensive services." It further states that "independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." As noted above, the 2019 SOAH opinion and the 2022 Third Court of Appeals opinion concurred with these findings.

The requestor's position statement does not address how this inpatient admission was unusually extensive. The requestor does not provide a reasonable explanation why this admission was more extensive when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually extensive. The DWC concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6)(A)(ii).

4. For the reasons stated above, the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 TAC §134.401(c)(1) subtitled *Standard Per Diem Amount* and §134.401(c)(4) subtitled *Additional Reimbursements*. The DWC notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

28 TAC §134.401(c)(3)(A)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission ..." Review of the submitted documentation finds that the length of stay for this admission was one surgical day. The standard per diem amount is \$1,118.00 per surgical day.

28 TAC §134.401(c)(4)(A), states, "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)." Review of the submitted medical bill indicates that the requestor billed revenue code 278 for implants at \$24,120.00. The DWC finds the total allowable for the implants billed under revenue code 278 is:

Description	Units	Cost per Unit	Total Cost	Cost + 10%
BAK Interbody Cage	2	\$2,195.00	\$4,390.00	\$4,829.00
Allomatrix 3 cc	1	\$590.00	\$590.00	\$649.00
Total				\$5,478.00

The DWC finds that the total allowable for this admission is \$6,596.00. According to the submitted documentation, the respondent issued payment in the amount of \$5,947.00. The DWC recommends an additional reimbursement of \$649.00.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly.

Consequently, 28 TAC §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled

Additional Reimbursements are applied and result in an additional reimbursement of \$649.00.

Order

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the DWC has determined that the requestor is entitled to additional reimbursement for the services in dispute. It is ordered that JC Penney Corporation, Inc. must remit to Vista Medical Center Hospital \$649.00 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

Authorized Signature

_____	_____	October 27, 2023
Signature	Medical Fee Dispute Resolution Officer	Date

Your Right to Appeal

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed Request for a Medical Contested Case Hearing (form DWC045A) must be received by the DWC Chief Clerk of Proceedings within twenty days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MFDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. Please include a copy of this Medical Fee Dispute Resolution Findings and Decision, together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a certificate of service demonstrating that the request has been sent to the other party.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.