

_____	§	BEFORE THE STATE OFFICE
_____, PETITIONER	§	
	§	
VS.	§	OF
TEXAS WORKERS'	§	
COMPENSATION COMMISSION AND	§	
SCIENTIFIC THERAPY & ADVANCED	§	
TREATMENT, RESPONDENTS	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

This consolidated proceeding involves four cases in which the _____ or Scientific Therapy & Advanced Treatment (STAT) appealed the findings and decisions of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission). STAT is a provider of durable medical equipment, including the BMR NT2000 (NT2000), a combination neuro-muscle stimulator and TENS unit. The issue in this case is whether STAT should be reimbursed for supplies it provided when it rented the machines to workers' compensation claimants.

After considering the evidence and arguments, the Administrative Law Judge (ALJ) concludes that STAT is entitled to recover the amounts in dispute.

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing convened on January 8, 2003, before ALJ Sarah G. Ramos. Randy Burgett represented STAT, and Assistant Attorney General Brad McClellan represented _____. The Commission neither appeared nor participated in this proceeding.

III. DISCUSSION

A. Background

¹Four dockets were consolidated into this one. The other three docket numbers were 453-02-3538.M4, 453-02-3847.M4, and 453-03-0900.M4.

In each of the four cases, a ___ employee sustained a work-related injury, and the compensability of the injuries is not in dispute. Each claimant was prescribed an NT2000 to be used as a muscle stimulator. STAT then billed ___ for the monthly rental charge and also billed for NT2000 supplies. Three of the cases have two dates of service, and one had one date of service, making a total of seven times STAT billed ___ \$85 for supplies. Thus, the amount in dispute is \$595.

B. Applicable Law

Workers' compensation insurance covers all medically necessary health care, which includes all reasonable medical aid, treatments, and services reasonably required by the nature of the compensable injury and reasonably intended to cure or relieve the effects naturally resulting from a compensable injury.² Section 413.011 of the Act requires the Commission to establish medical policies and guidelines relating to fees charged or paid for medical services.³ In accordance with this section, the Commission adopted Medical Fee Guidelines (MFGs) that specify amounts payable for particular billing codes. No MFG specifies a monthly charge for NT2000 rent or supplies. STAT argued that MFG provisions applicable to muscle stimulators or TENS units could serve as appropriate billing guides for the NT2000, and ___ did not disagree.⁴

The 1996 MFG Durable Medical Equipment (DME) Ground Rules, which are applicable to these cases, state in pertinent part:

VIII. Supplies

. . . DME supplies shall be itemized and billed under the appropriate HCPCS code. . .
. Documentation for distribution of supplies shall be provided when requested by the TWCC.

²TEX. LAB. CODE ANN. § 401.011(19) and (31). The Texas Workers' Compensation Act is found at TEX. LAB. CODE ANN. § 401.001 *et seq.* and is hereafter referred to as the Act.

³§ 413.011(d) of the Act. In 2001, the legislature amended § 413.011 so that § 413.011(b) became § 413.011(d), but the text is unchanged. The ALJ uses the current subsection (d) for reference.

⁴In SOAH Decision and Order in Docket No. 453-01-1955.M4, ALJ Craig Bennett found that the fair and reasonable reimbursement for the sale of an NT2000 was the sum of the maximum allowable reimbursement for a TENS unit and a neuro-muscular stimulator. Thus, there is precedent for considering an NT2000 in the general categories of these similar devices.

...

IX. Billing

...

C. Invoices should be billed at the provider's usual and customary rate. Reimbursement shall be an amount pre-negotiated between the provider and carrier or if there is no pre-negotiated amount, the fair and reasonable rate. A fair and reasonable reimbursement shall be the same as the fees set for the "D" codes in the 1991 [MFG].

X. TENS Units

...

C. All TENS supplies shall be billed with code E1399 and shall be itemized. Reimbursement shall not exceed the maximum allowable per month (\$85.00) except in those unusual cases where additional supplies are medically necessary, adequate documentation describing the situation shall be provided. . . .

As the 1996 MFG mentions, the 1991 MFG should be used to determine fair and reasonable reimbursement for D codes. The MFG does not list a supply reimbursement rate for the NT2000, but the 1991 MFG lists rates for TENS and neuro-muscle stimulator units. Those amounts are:

<u>CODE</u>	<u>DESCRIPTION</u>	<u>PURCHASE</u>	<u>RENTAL</u>
D0550	Muscle stimulator	1050.00	150.00
D0555	Stimulator supplies	85.00	N/A
D0370	TENS 4-lead	495.00	85.00
D0374	TENS supplies (monthly)	85.00	N/A

3. Evidence and Arguments

1. MRD Decisions

Three TWCC Medical Dispute Resolution Officers rejected the argument that the \$85 STAT charged for supplies was global to the rental of an NT2000 and recommended reimbursement at the rate requested by STAT. Without explaining the reason for her different opinion, one officer disagreed with the other three and found that the supplies were global to the rental. The four MRD decisions were signed between May and September of 2002.

2. _____

_____ Claims Supervisor Kim Teich testified that the monthly rental fee should cover all supply costs. In her opinion, the fee listed for TENS unit supplies under D0555 should be reimbursable only when a machine has been purchased, not rented.

In his arguments, Mr. McClellan agreed that TENS units and the NT2000 are similar in what they do for claimants. But, he argued, if rates for TENS units are used, other provisions in the MFGs must be followed, and the MFG in Section X requires itemization of TENS unit supplies. Therefore, according to Mr. McClellan, STAT could not recover because it did not itemize the supplies.

3. STAT

The supplies provided were necessary for proper functioning of the units, Mr. Burgett testified. STAT does not sell supplies, such as batteries, separately. Regardless of whether it cost more or less to provide the needed products to a particular individual, STAT used codes D0555 and E1399 and charged the \$85 maximum rate allowed by the MFG because that is STAT's usual and customary charge. STAT itemizes supplies for only two carriers who have requested itemization, the Department of Labor and an out-of-state carrier. Further, Mr. Burgett said that ___ was the only carrier to deny the fee for supplies when a unit had been rented rather than purchased.

In response to arguments that supplies are global of the rental cost, Mr. Burgett contended that the 1991 MFG amounts for muscle stimulator and TENS units illustrate only that electrotherapy supplies cannot be rented. Therefore, the rental column uses "N/A" because one does not rent supplies; they will not be returned to the provider when they are no longer needed, as an NT2000 would. Supplies are disposable items, intended to used and discarded.

IV. ANALYSIS

STAT did not itemize its billing, and as Mr. Burgett noted, the billing records do not indicate what particular supplies were provided to each claimant. The 1996 MFG requires TENS supplies to be itemized, giving weight to ___ argument that the NT2000 supply claims should be denied because they were not itemized. On the other hand, _____ never used an explanation of benefits denial code that highlighted STAT's failure to itemize. The four MRD records in this case, admitted as Exhibits 1-4, are replete with payment denials based on code G, unbundling. Ms. Teich and other ___ representatives wrote several letters outlining ___ position that supplies are global of NT2000 rentals. But, Mr. McClellan raised the itemization point for the first time during the hearing.

Section 408.027(d) of the Act requires a carrier that disputes a health care provider's payment request to send a report that sufficiently explains the reasons for the reduction or denial of payment. The Carrier must explain its reasons on Form TWCC-62, Notice of Medical Payment Dispute, or its equivalent. 28 TEX. ADMIN. CODE § 133.304(a). Section 413.031 of the Act provides for medical dispute resolution at the Commission. Review at the MRD consists of a paper review of documents submitted by the parties, and these documents define the scope of the MRD dispute.

It follows, therefore, that a carrier may not, for the first time in the SOAH proceeding, raise a basis for denying payment that it did not present to the provider or to the MRD. Therefore, the ALJ will not deny reimbursement based on failure to itemize.

As for the issue of whether reimbursement for rental includes any necessary supplies, the ALJ disagrees with UTS. Neither the 1991 nor the 1996 MFGs state that supplies are included in a

monthly rental fee. The 1991 MFG separately lists supplies for TENS units and muscle stimulators. The plain language of the MFG supports STAT's position that no cost is listed for supply rental because supplies are not rented. They are intended to be purchased because they cannot be reused. If the Commission intended to include supply costs in the cost of a rental, it could have plainly said so, but it did not. Consequently, the ALJ finds that STAT should be reimbursed for the supplies it provided to claimants who rented NT2000 units.

IV. FINDINGS OF FACT

1. Scientific Therapy & Advanced Treatment (STAT) provides durable medical equipment (DME), including the BMR NT2000 (NT2000), a combination neuro-muscle stimulator and TENS unit, to workers' compensation claimants.
2. In each of the four cases in this docket, a _____ employee sustained a work-related injury, and the compensability of the injuries is not in dispute.
3. Each claimant was prescribed an NT2000 to be used as a muscle stimulator.

Case-Specific Findings

Docket No. 453-02-3538.M4

4. On June 14, 2001, and again on August 14, 2001, STAT provided supplies for the NT2000 rented to a workers' compensation claimant, and STAT billed UTS \$85 for each day under codes E1399 and D0555.
5. _____ denied payment of the claim and listed denial code G, unbundling, on its explanation of benefits (EOB).
6. STAT requested review by MRD, and MRD ordered payment of \$170.
7. _____ timely appealed to the State Office of Administrative Hearings (SOAH).
8. The Commission issued the notice of hearing on July 10, 2002, and a statement of matters asserted on September 10, 2002.

Docket No. 453-02-3847.M4

9. On May 17, 2001, and again on June 17, 2001, STAT provided supplies for the NT2000 rented to a workers' compensation claimant, and STAT billed _____ \$85 for each day under codes E1399 and D0555.
10. _____ denied payment of the claim and listed denial code G, unbundling, on its EOB.
11. STAT requested review by MRD, and MRD ordered payment of \$170.

12. ____ timely appealed to SOAH.
13. The Commission issued the notice of hearing on August 8, 2002, and a statement of matters asserted on October 25, 2002.

Docket No. 453-02-3939.M4

14. On May 18, 2001, and again on June 18, 2001, STAT provided supplies for the NT2000 rented to a workers' compensation claimant, and STAT billed ____ \$85 for each day under codes E1399 and D0555.
15. ____ denied payment of the claim and listed denial code G, unbundling, on its EOB.
16. STAT requested review by MRD, and MRD ordered payment of \$170.
17. ____ timely appealed to SOAH.
18. The Commission issued the notice of hearing on August 10, 2002, and a statement of matters asserted on October 24, 2002.

Docket No. 453-03-0900.M4

19. On June 8, 2001, STAT provided supplies for the NT2000 rented to a workers' compensation claimant, and STAT billed ____ \$85 under code E1399.
20. ____ denied payment of the claim and listed denial code G, unbundling, on its EOB.
21. STAT requested review by MRD, and MRD denied payment of the requested amount, \$85.
22. STAT timely appealed to SOAH.
23. The Commission issued the notice of hearing, including a statement of matters asserted, on November 1, 2002.

General Findings

24. The notices of hearing and statements of matters asserted listed the time, place, and nature of the hearing; included a statement of the legal authority and jurisdiction under which the hearing was to be held; referred to particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
25. By order dated September 12, 2002, Docket Nos. 453-02-3939.M4, 453-02-3847.M4, and 453-02-3538.M4 were consolidated into the first listed docket number.
26. By order dated November 25, 2002, Docket No. 453-03-0900.M4 was consolidated into the lead docket, 453-02-3939.M4.

27. In response to motions for continuance, SOAH ALJs issued orders setting January 8, 2003, as the hearing date for the consolidated docket.
28. The hearing convened as scheduled at SOAH, 300 West Fifteenth Street, Austin, Texas. _____ and STAT were both represented.
29. The Commission adopted Medical Fee Guidelines (MFGs) that specify amounts payable for particular billing codes.
30. There is no specific billing code or maximum allowable reimbursement (MAR) for NT2000 supplies.
31. The 1996 MFG DME Ground Rules instruct providers to use the miscellaneous HCPCS code E1399 when no other HCPCS code is listed for DME or supplies provided to the injured workers.
32. There is no MAR for items billed under code E1399, but reimbursement for them is limited to fair and reasonable rates.
33. The 1996 DME Ground Rules state that a fair and reasonable reimbursement is the same as the fees set for the "D" codes in the 1991 Medical Fee Guideline.
34. The 1991 DME Ground Rules lists \$85 per month as the reimbursement rate for neuro-muscle stimulator supplies under code D0555.
35. Because the NT2000s in these cases were used as muscle stimulators, it is reasonable to use the billing code and MAR for muscle stimulator supplies in determining a fair and reasonable reimbursement fee for NT2000 supplies.
36. Electrotherapy supplies cannot be rented; supplies are disposable items, intended to be used and discarded.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to the Workers' Compensation Act. TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the foregoing findings of fact and conclusions of law, STAT is entitled to recover

\$595 from_____.

ORDER

IT IS ORDERED that _____ pay the \$595 in claims requested by Scientific Therapy & Advanced Treatment.

SIGNED this 7th day of March, 2003.

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS