

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Ste. 502
Austin, TX 78701

SOAH DOCKET NO. 453-02-3973.M4
[MDR TRACKING NO. M4-02-2299-01]

HIGHPOINT PAIN CLINIC,
Petitioner

V.

TEXAS WORKERS' COMPENSATION
COMMISSION AND TWIN CITY FIRE
INSURANCE CO.,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

Highpoint Pain Clinic¹ (Provider) has appealed an order of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) regarding medical services for _____ (Claimant). The MRD denied the Provider's request for additional reimbursement of \$1,633.20 for services that it provided to the Claimant. The only disputed issues are:

- whether the \$105.60 that Liberty Mutual Insurance Co. (Carrier) reimbursed the Provider for each of three occasions on which the Provider furnished fluoroscopic guidance guide an epidural steroid injection (ESI) into the Claimant's spine was fair and reasonable compensation for those services; and
- whether the Provider is entitled to reimbursement for the epidurography that it provided on each of those same three occasions.

The Parties agree that the Provider, since it disputes the MRD's decision, has the burden of proof.

¹Alternately referred to in some exhibits and pleadings as Highpoint Pain Management.

As set out below, the Administrative Law Judge (ALJ) finds that the Provider is not entitled to and denies the Provider's request for additional compensation for the above services.

II. Fluoroscopic Guidance

The Provider furnished fluoroscopic guidance² on June 7, July 11, and August 15, 2001, to assist the Claimant's doctor in providing the ESI to the Claimant. For each of the three service dates, the Carrier reimbursed the Provider \$105.60 for the fluoroscopic guidance. The Provider maintains that the fair and reasonable compensation for fluoroscopic guidance it provided is \$350 per service date.

The MRD found that fluoroscopic guidance is simply another type of fluoroscopy. In its Medical Fee Guideline (MFG), the Commission has set the maximum allowable reimbursement (MAR) for fluoroscopy, with certain exceptions not relevant in this case (*e.g.* cardiac fluoroscopy), under CPT code 76000 as \$88.³ The Carrier agrees with MRD, though it reimbursed the Provider more than that, \$105.60. The Provider responds that the fluoroscopic guidance it furnished was unique. Indeed, it billed for the service as unlisted diagnostic radiologic procedure, CPT code 76499, with explanatory modifiers.

²Some exhibits also refer to this as fluoroscopic control.

³Medical Fee Guideline 1996; adopted by reference at 28 Texas Administrative Code (TAC) § 134.201(a).

In two prior cases, this and another ALJ have found that fluoroscopic guidance is included within the Commission's MFG MAR for fluoroscopy.⁴ In this case, this ALJ concludes the same.

The Parties point to and the ALJ can find no definition of "fluoroscopy" in the Labor Code⁵ or the Commission's rules. The ALJ takes official notice of the following definition:

Fluoroscopy is a technique for obtaining "live" X-ray images of a living patient. The Radiologist uses a switch to control an X-Ray beam that is transmitted through the patient. The X-rays then strike a fluorescent plate that is coupled to an "image intensifier" that is (in turn) coupled to a television camera. The Radiologist can then watch the images "live" on a TV monitor.⁶

The evidence includes manufacturer's literature for the Provider's equipment that supports this definition.⁷

⁴SOAH Docket No. 453-02-1088.M4 (Apr. 22, 2002, ALJ Smith); SOAH Docket No. 453-02-3799.M4 (Dec. 9, 2002, ALJ Newchurch).

⁵Tex. Labor Code Ann. (Labor Code) (West 2002).

⁶Uniformed Services University of the Health Sciences, Department of Radiology and Radiological Sciences, <<http://rad.usuhs.mil/rad/home/flouro.html>> (Aug. 11, 2002).

⁷ALJ Ex. 1, pp. 71 *et seq.*

The record also does not contain a definition of “fluoroscopic guidance.” However, the Provider notes that the American Medical Association (AMA) in 2002 adopted CPT code 76005 that, while not completely defining, at least partially explains what “fluoroscopic guidance” is:

Fluoroscopic guidance and localization of needle . . . for spine or paraspinous diagnostic or therapeutic injection procedures . . . epidural . . .”⁸

The Provider complains that the Commission has failed to adopt this new CPT code and an MAR for it. The Provider also notes that the Commission is obligated to review and revise its guidelines, which would include the MFG, every two years to reflect fair and reasonable rates.⁹ For that reason, the Provider introduced evidence attempting to prove that the fair and reasonable compensation for the “fluoroscopic guidance” it provided is higher than the \$88 MAR for most fluoroscopy. The ALJ disagrees.

The ALJ finds that fluoroscopic guidance is a type of fluoroscopy, albeit for the specific purpose of localizing a needle for an ESI or similar procedures. He can draw no other conclusion, since “fluoroscopic” is simply the adjective form of the word “fluoroscopy.” The Commission’s CPT code 76000 is defined in the MFG as:

Fluoroscopy (separate procedure), up to one hour physician time, other than 71023 or 71034 (e.g., cardiac fluoroscopy).

⁸ALJ Ex. 1 p. 104.

⁹Labor Code § 413.012.

The MFG also sets an \$88 MAR CPT code 76000 and also provides that an “insurance carrier will reimburse the lesser of the billed charge, or the MAR.”¹⁰ Since “fluoroscopic guidance” is a type of fluoroscopy and the MFG does not set a separate MAR for “fluoroscopic guidance,” the ALJ concludes that the MAR for “fluoroscopic guidance” is \$88. Since that MAR applies, further inquiry as to the fair and reasonable rate of reimbursement for “fluoroscopic guidance” is not necessary.

Moreover, nothing in the statute that requires the Commission to review its guidelines every two years invalidates the current guidelines if the Commission fails to review them. The ALJ concludes that the Carrier has fully compensated the Provider by paying \$105.60 for the fluoroscopic guidance, which exceeds the applicable \$88 fluoroscopy MAR, and that the Provider’s request for additional compensation for that procedure should be denied.

III. Epidurogram

The Provider also argues that it is entitled to additional reimbursement of \$300 for the epidurogram it provided on each of the three occasions. The Carrier did not reimburse Provider this amount and responds that each epidurogram was global to the fluoroscopy.

The evidence is not completely clear, but it suggests¹¹ that an epidurogram is the injection of contrast media during the ESI so that the doctor can, through the fluoroscopy, see the spread of the steroid delivered by an ESI. The ALJ so concludes.

In a formal advisory, the Commission’s former Executive Director, Todd K. Brown, stated his opinion that a video tape of a fluoroscope may be considered an appropriate legal precaution;

¹⁰MFG, General Instructions, VI. Reimbursement.

¹¹ALJ Ex. 1, pp. 56, and 187; Carrier Ex. 2, p. 5.

however, it is very rarely considered a medical necessity.¹² The Provider argues that the epidurogram was necessary to see that spread of the steroid. The Claimant's treating physician stated through a letter admitted into evidence that:

An epidurogram is also essential. An epidurogram allows us to see the distribution of medication spread in the epidural space and also insures us that the injection was placed in the epidural space and not in some other location. Therefore fluoroscopic guidance and epidurography enhances therapeutic results, decreases complications and enable the procedure to be performed in a much safer fashion.¹³

The doctor who administered the ESI also stated in her notes on the date of each ESI that she could see the steroid spread in the Claimant's spine.¹⁴

The ALJ agrees that the epidurogram was necessary, but the question remains: was it part of the fluoroscopy? The former Executive Director's Advisory led MRD to conclude that an epidurogram and similar procedures, like a video tape of a fluoroscopy, are part of the fluoroscopy and should not be billed separately. The American Society of Anesthesiologists has similarly stated in a newsletter that epidurography and fluoroscopic guidance generally should not both be billed in that epidurography refers to a formal study that would include fluoroscopy and a formal written report.¹⁵

¹²ALJ Ex. 1, p. 89. *See also* TWCC Advisory 97-01, <<http://twcc.state.tx.us/news1/advisories/ad9701.html>> (Jun. 13, 1997).

¹³ALJ Ex. 1, p. 49.

¹⁴ALJ Ex. 1, pp. 174, 177, and 180.

¹⁵ALJ Ex. 1, p. 56.

The ALJ concludes that an epidurogram is included within fluoroscopy. The evidence suggests that an epidurogram is intimately tied to, indeed it is part of, the fluoroscopy. Absent the injection of contrast media, there would be no fluoroscopy. Nor can the ALJ agree that printing a hard copy of what the fluoroscopy allowed the doctor to see "live" on a video screen entitles the Provider to additional reimbursement.

IV. Summary

The ALJ concludes that all of the Provider's requests for additional reimbursement should be denied.

V. Findings of Fact

1. On _____, _____ (Claimant) sustained a work-related injury to his back.
2. On the date of injury, the Claimant's employer was _____ and its workers' compensation insurance carrier was Twin City Fire Insurance Co. (Carrier).
3. On June 7, July 11, and August 15, 2001, the Claimant received epidural steroid injections (ESI) to treat his pain resulting from his compensable injury.
4. The Provider furnished fluoroscopic guidance to assist the doctor in giving the ESI to the Claimant.
5. Fluoroscopy is a technique for obtaining "live" X-ray images of a living patient. The Radiologist uses a switch to control an X-Ray beam that is transmitted through the patient. The X-rays then strike a fluorescent plate that is coupled to an "image intensifier" that is (in

turn) coupled to a television camera. The Radiologist can then watch the images "live" on a TV monitor.

6. Fluoroscopic guidance is a type of fluoroscopy that allows the localization of needle in the Claimant's spine for the ESI.
7. An epidurogram is the injection of contrast media during the ESI so that the doctor can, through the fluoroscopy, see the spread of the steroid delivered by an ESI and documented by a hard copy photo.
8. An epidurogram is intimately tied to and included within fluoroscopy.
9. The Provider sought reimbursement from the Carrier for the fluoroscopic guidance and epidurogram.
10. For each of the three service dates, the Carrier reimbursed the Provider \$105.60 for the fluoroscopic guidance and nothing for the epidurogram.
11. On February 28, 2002, the Provider filed a request for medical dispute resolution with the TWCC.
12. MRD denied the Provider's request for additional reimbursement for the above services.
13. The Provider sought a hearing on the above dispute before the State Office of Administrative Hearings (SOAH).
14. Notice of an October 24, 2002 hearing in this case was mailed to the Carrier, the Provider, and the TWCC Staff on August 21, 2002.

15. On October 24, 2002, William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH held a hearing on this dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
16. The Carrier appeared at the hearing through its attorney, James Loughlin.
17. The Provider appeared at the hearing through its employee, Connie Morgan, by telephone.

VI. Conclusions of Law

18. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2002) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2001).
19. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
20. As the party seeking relief, the Provider has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h) (2002).
21. 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. Labor Code § 408.021 (a).
22. The Commission's Medical Fee Guideline (MFG) sets a the maximum allowable reimbursement (MAR) of \$88 for all types of fluoroscopy (CPT code 76000) with certain

exceptions, not including fluoroscopic guidance. Medical Fee Guideline 1996; adopted by reference at 28 TAC § 134.201(a) (MFG).

23. The MFG also provides that an “insurance carrier will reimburse the lesser of the billed charge, or the MAR.” MFG, General Instructions, VI. Reimbursement.
24. Based on the above Findings of Fact and Conclusions of Law, the Provider was properly reimbursed for the fluoroscopic guidance it provided.
25. Based on the above Findings of Fact and Conclusions of Law, the Provider’s requests for additional reimbursement as discussed above should be denied.

ORDER

IT IS ORDERED THAT the Provider’s requests for additional reimbursement as discussed above are denied.

Signed December 12, 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE