

DOCKET NO. 453-03-0994.M4
MDR TRACKING NO. M4-02-3352-01

FIDELITY & GUARANTY INS. CO.,	§	BEFORE THE STATE OFFICE
<i>Petitioner</i>	§	
	§	
VS.	§	OF
	§	
HOUSTON PREMIER DME	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The issue in this case is whether Houston Premier DME (Houston) should be reimbursed an additional \$439.60 for a pump provided to the workers' compensation claimant. The pump was prescribed as part of a cryotherapy unit that circulated water through a pad that the patient wrapped around his shoulder. The carrier, Fidelity & Guaranty Insurance Company (Fidelity), paid an amount of money consistent with rental of the pump. The Administrative Law Judge (ALJ) concludes that the carrier's decision to reimburse only for the rental of the pump was consistent with the Medical Fee Guideline of the Texas Workers' Compensation Commission (Commission), and no further reimbursement is warranted.

I. Jurisdiction, Notice, and Procedural History

The Texas Workers' Compensation Commission (the Commission) has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.

The Commission's Medical Review Division (MRD) issued its decision on October 1, 2002. Fidelity filed a timely request for hearing. Proper and timely notice of the hearing was issued November 6, 2002. The hearing was convened December 16, 2002, with ALJ Cathleen Parsley presiding. Steven M. Tipton appeared for Fidelity, and Alex Cuevas appeared for Houston. The hearing was adjourned and the record closed the same day.

Following the hearing, Judge Parsley took another position with SOAH, and this case was re-assigned to ALJ Shannon Kilgore, who prepared this Decision and Order after listening to the tape of the hearing and reviewing the evidentiary record.

II. Legal Standards

Section 408.021 of the Texas Labor Code states:

- (a) 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. The employee is specifically entitled to health care that:
 - (1) cures or relieves the effects naturally resulting from the compensable injury;
 - (2) promotes recovery; or

- (3) enhances the ability of the employee to return to or retain employment.

Section 401.11(19) defines "health care" to include "all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services."

The ground rules for durable medical equipment in the Commission's 1996 Medical Fee Guideline (MFG) provide, "Rental fees are applicable for short-term utilization up to 60 days." Medical Fee Guideline, p. 253 (1996).¹ The 1996 MFG also provides that the fees set for the "D" codes in the 1991 MFG constitute fair and reasonable rates for durable medical equipment. *Id.*, p. 254. Under the 1991 MFG, the purchase price for the pump at issue in this case (D0368) is \$490.20, while the rental fee is \$50.60. The 1991 MFG also states, "If it is more cost effective to purchase an item rather than rent it, this must be stressed and brought to the attention of the insurance carrier." Medical Fee Guideline, DME Ground Rules, p.1 (1991).

Fidelity, the petitioner, has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).

III. Discussion

Background. The workers' compensation claimant in this case suffered a shoulder injury. On ___, the claimant's orthopaedic surgeon prescribed cryotherapy and CPM (continuous passive motion). See Exhibit 1, p. 20. The surgeon used one prescription form for both kinds of therapy. He circled both "rental" and "purchase," and stated that the treatment period would be 30 days. *Id.* Houston provided the cryotherapy pump to the claimant in a purchase, not a rental, transaction. Houston billed Fidelity \$495.00 for the pump (CPT Code E0236). *Id.*, p. 38. Fidelity paid \$50.60, citing explanation code F ("Reduction according to Medical Fee Guideline."). *Id.*, pp. 38-39. The Commission's Medical Review Division (MRD) determined that \$ 490.20 is the appropriate amount for reimbursement of the purchase, and ordered Fidelity to pay Houston \$439.60 (in addition to the \$50.60 already provided).²

The parties' positions. Fidelity argues that the DME ground rules should be interpreted to say that equipment to be used for less than 60 days, and for which the 1991 "D" codes provide a rental fee, should be rented rather than purchased. Houston argues that it is not clear from the prescription in this case whether the 30 days applied to the cryotherapy equipment or the CPM unit. Also, the provider asserts that in any event, reimbursement of \$490.20 is fair and reasonable.

Analysis and recommendation. The ALJ interprets the surgeon's prescription as ordering both the cryotherapy and the CPM for 30 days. There is nothing in the record to suggest otherwise.

¹ See 30 TEX. ADMIN. CODE § 134.201(Commission's rule adopting the Medical Fee Guideline by reference).

² Fidelity, in its argument before the MRD, did not assert that it owed only \$50.60 because that is the applicable fee for rental of the pump. Rather, in a bewildering argument, it suggested that the \$490.20 figure was from an unknown source and therefore not applicable. Exhibit 1, pp. 49-50. However, it is evident to the ALJ, and should have been evident to anyone looking at the issue, that the \$50.60 reimbursed by the carrier is precisely the applicable rental fee.

The pump to be used in connection with the cryotherapy is very expensive, and in this case rental of the pump would clearly have been more cost-effective than purchase. The language of the DME ground rules strongly suggests that the Commission wants to see rental options made available for short-term use of medical equipment. That the 1991 “D” codes provide a rental fee for the pump in question indicates that it is the kind of equipment appropriate for rental. Under these circumstances, Fidelity’s decision to reimburse for one month’s rental of the pump was reasonable. The carrier does not have to pay any additional amount to Houston for the pump.

IV. Findings of Fact

1. The claimant suffered a compensable shoulder injury.
2. Fidelity & Guaranty Insurance Company (Fidelity) is the workers’ compensation insurer with respect to the claims at issue in this case.
3. On March 30, 2001, the claimant’s orthopaedic surgeon prescribed the use of cryotherapy equipment for the claimant for 30 days.
4. Houston Premier DME (Houston) sold a pump to the claimant and billed Fidelity \$495.00 under CPT Code E0236.
5. Fidelity paid \$50.60, citing explanation code F (“Reduction according to Medical Fee Guideline.”).
6. The Commission’s Medical Review Division (MRD) determined that \$490.20 is the appropriate amount for reimbursement of the purchase, and ordered Fidelity to pay Houston \$439.60 (in addition to the \$50.60 already provided).
7. Fidelity filed a request for hearing.
8. Notice of the hearing was issued November 6, 2002.
9. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
10. The hearing was convened December 16, 2002, with ALJ Cathleen Parsley presiding. Steven M. Tipton appeared for Fidelity, and Alex Cuevas appeared for Houston. The hearing was adjourned and the record closed the same day.

V. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ch. 401 *et seq.*

2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031; TEX. GOV'T CODE ch. 2003.
3. 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. TEX. LAB. CODE § 408.021.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.
5. Fidelity has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
6. The ground rules for durable medical equipment in the Texas Workers' Compensation Commission's 1996 Medical Fee Guideline provide that rental fees are applicable for short-term utilization up to 60 days. Medical Fee Guideline, p. 253 (1996).
7. The ground rules for durable medical equipment in the Texas Workers' Compensation Commission's 1996 Medical Fee Guideline also provide that the fees set for the "D" codes in the 1991 Medical Fee Guideline constitute fair and reasonable rates for durable medical equipment. Medical Fee Guideline, p. 254 (1996).
8. Under the 1991 Medical Fee Guideline, the purchase price for the pump at issue in this case (D0368) is \$490.20, while the rental fee is \$50.60.
9. Based on Finding of Fact No. 3 and Conclusions of Law 6, 7, and 8, Fidelity properly reimbursed Houston \$50.60 for the pump at issue in this case.
10. Houston is not entitled to additional reimbursement for the pump sold to the claimant for cryotherapy.

ORDER

IT IS THEREFORE ORDERED that Houston Premier DME is not entitled to additional reimbursement from Fidelity & Guaranty Insurance Company for the pump sold to claimant _____ for use in cryotherapy in 2001.

Signed this 29th of January, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Shannon Kilgore
Administrative Law Judge