

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701

DOCKET NO. 453-03-1233.M4
[MRD No. M4-02-4051-01]

SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT,
Petitioner

VS.

TEXAS WORKERS' COMPENSATION
COMMISSION AND METROPOLITAN
METHODIST HOSPITAL,
Respondents

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

San Antonio Independent School District (SAISD) has appealed the Findings and Decision issued by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) in a fee dispute involving an interpretation of the Commission's hospital fee guidelines. The MRD determined that Methodist Metropolitan Hospital (Hospital) is entitled to total reimbursement of \$55,508.51, using the Commission's stop-loss reimbursement methodology. Because SAISD had previously paid the Hospital \$37,332.37, MRD ordered SAISD to reimburse the Hospital an additional \$18,176.14. In response, SAISD argues that when appropriate reductions are made for surgical implantables and other audit adjustments, the correct total reimbursement amount is \$24,911.05. Therefore, SAISD contends that it has already overpaid the Hospital and requests a refund of \$12,421.32. The Administrative Law Judge (ALJ) finds the MRD properly applied the Commission's stop-loss methodology, denies SAISD's appeal, and finds that the Hospital is entitled to additional reimbursement of \$16,472.32.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

On August 11, 2003, ALJ Thomas H. Walston convened a hearing on the merits at the SOAH hearing facilities in Austin, Texas. Attorney Dean G. Pappas represented SAISD and attorney Scott Placek represented the Hospital. The Commission did not participate in the hearing. Notice and jurisdiction were not contested and will be addressed in the findings of fact and conclusions of law. The hearing concluded and the record closed the same day.

II. DISCUSSION

A. Factual Overview

The basic facts were stipulated by the parties. On ____, ____ sustained a compensable injury. On June 20, 2001, Claimant was admitted to Metropolitan Methodist Hospital in San Antonio, where she underwent a laminectomy and decompressions with fusion at L3-4 and L4-5. ____ was discharged from the Hospital on June 26, 2003. The Hospital submitted a bill to SAISD for \$74,664.69 based on its usual and customary charges for the six-day inpatient stay and surgical procedure. The bill included \$54,332.00 for surgical implantables and orthotic devices.

Pursuant to TWCC Rule 133.304(d), SAISD paid the Hospital \$37,332.37, which equaled 50% of the Hospital's bill, pending an audit by Medical Audit Consultants, Inc. Ms. Deborah Wood, the Vice President of Medical Audit Consultants, then performed the audit. She added \$106.72 for undercharges for pharmacy items, deducted \$2,473.88 for charges not supported by documentation, and deducted \$557.94 for charges unrelated to the compensable injury. In addition, Ms. Wood reduced charges for the surgical implantables from \$54,332.00 to \$15,797.14, which equaled the Hospital's cost plus 10%.¹ The following is a summary of Ms. Wood's adjustments:

Department	Hospital Bill Charges	Audited Under Charges (+)	Adjusted Hospital Bill (=)	Audited Unsupported Charges (-)	Audited Unrelated Charges (-)	UCR Credit Amount (-)	Audited Adjusted Charges (=)
Pharmacy	3,364.99	106.72	3,471.71	849.88	77.94	0.00	2,543.89
Central Supply	57,129.70	0.00	57,129.70	30.00	0.00	38,524.86	18,574.84 ²
Laboratory	1,829.00	0.00	1,829.00	233.00	480.00	0.00	1,116.00
Radiology	1,667.00	0.00	1,667.00	1,180.00	0.00	0.00	487.00
OR/Anesth/RR	6,928.00	0.00	6,928.00	0.00	0.00	0.00	6,928.00
Physical Therapy	236.00	0.00	236.00	181.00	0.00	0.00	55.00
EKG/ECG/							

¹ The Hospital's cost was \$14,361.04; cost plus 10% equals \$15,797.14 ($\$14,361.04 \times 1.10 = \$15,797.14$).

² Central Supply includes other items in addition to surgical implantables. Therefore, the total Central Supply amount is greater than the \$15,797.14 allowed for the surgical implantables alone.

EEG	150.00	0.00	150.00	0.00	0.00	0.00	150.00
Room & Care	3,360.00	0.00	3,360.00	0.00	0.00	0.00	3,360.00
Total	74,664.69	106.72	74,771.41	2,473.88	557.94	38,524.86	33,214.73

Ms. Wood then applied the stop-loss 75% reimbursement methodology to her audited balance of \$33,214.73 to produce a total reimbursement amount of \$24,911.05.³ But because it previously paid the Hospital \$37,332.37, SAISD contends that it is entitled to a refund of \$12,421.32.

At hearing, the Hospital stated that it no longer disputes any of SAISD's audit adjustments except for the reduction of surgical implantables to cost-plus-10%. Addition of that reduction back into the audited bill produces a total audited bill of \$71,739.59. Applying the TWCC stop-loss 75% reimbursement methodology to this amount produces a total reimbursement of \$53,804.69.⁴ Then, after deducting SAISD's prior payment of \$37,332.37, the Hospital states that it is entitled to additional reimbursement of \$16,472.32.⁵

In summary, the parties' positions are as follows:

	Hospital	SAISD
Total Bill	\$74,664.69	\$74,664.69
Audit Adjustments	(2,925.10)	(41,449.96)
Subtotal	71,739.59	33,214.73
75% Stop Loss Methodology	X 0.75	X 0.75
Reimbursement Amount	53,804.69	24,911.05
Less SAISD Payment	(37,332.37)	(37,332.37)
Balance Due / (Refund Due)	\$16,472.32	(\$12,421.32)

³ $\$33,214.73 \times 0.75 = \$24,911.05$. SAISD recognizes that the stop-loss 75% reimbursement methodology is normally applied to audited balances of \$40,000 or greater. However, it suggests that using this methodology actually benefits the Hospital because the Commission's per diem reimbursement methodology produces an even lower reimbursement amount. SAISD's witness calculated a per-diem reimbursement total of \$22,511.14 (6 days x \$1,118.00 per diem rate = \$6,714.00 + \$15,797.14 for implantables at cost-plus-10% = \$22,511.14). This amount is slightly less than the \$24,911.05 calculated by SAISD under the 75% stop-loss methodology.

⁴ $\$71,739.59 \times 0.75 = \$53,804.69$.

⁵ This amount is \$1,703.77 less than the \$18,176.14 awarded by MRD. This result occurs because MRD reduced the Hospital's total bill by only \$653.35 before applying the 75% reimbursement factor. But, as noted previously, the Hospital now agrees to the other audit reductions made by SAISD, except for the reduction for implantables. The agreed reductions total \$2,925.10, which results in a lower reimbursement amount than MRD's award.

B. Parties' Arguments

1. Introduction

Under the Commission's Rules, when a hospital's total audited bill is less than \$40,000, the hospital is reimbursed at a \$1,118.00 per-diem rate for surgical admissions, plus certain itemized costs. These separate itemized costs include surgical implantables, reimbursed at the hospital's cost plus 10%. On the other hand, when a hospital's total audited bill is greater than \$40,000, the Commission's stop-loss methodology applies, and the hospital is reimbursed at 75% of its total audited bill. The purpose of the stop-loss methodology is "to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker."⁶ The issue in this case is whether payment for surgical implantables at cost-plus-10% is part of the audit to determine if the \$40,000 stop-loss threshold has been met, or whether it is only additional reimbursement under the per-diem reimbursement methodology.

2. SAISD's Arguments

SAISD contends that it properly calculated the Hospital's reimbursement and that the IRO's decision should be reversed. In essence, it argues that charges for surgical implantables must be set at cost-plus-10% regardless of whether the Commission's per-diem or stop-loss methodology applies. SAISD also contends that the Hospital handled the billing in this case consistent with SAISD's position. It points out that, as part of the billing in this case, the Hospital sent SAISD a separate invoice for implantables priced at cost-plus-10%, or \$15,797.14, even though the Hospital originally billed these items at \$54,332.00. Therefore, SAISD argues that it was justified in calculating the cost of the implantables at the lower price. After reducing the cost of implantables to cost-plus-10% and making other appropriate audit adjustments, SAISD paid 75% of the total audited charges. SAISD notes that under its approach, it technically should have reimbursed the Hospital based on a per-diem rate rather than on a stop-loss rate because the total audited charges were less than \$40,000. However, SAISD states that its proposed reimbursement is actually greater than a per-diem reimbursement, so no harm results to the Hospital.

Ms. Debbie Wood testified for SAISD. She is the Vice-President of Medical Audit Consultants and she performed an audit on the Hospital's bill, as described previously. Ms. Wood discovered a small amount of undercharges for pharmacy, but she deducted other charges as either undocumented or unrelated to the compensable injury. In addition to the Hospital's original bill, Ms. Wood also received a separate invoice from the Hospital for surgical implants, such as cages, screws, and rods, listed at cost-plus-10%. She reduced the original bill for the implantables to cost-plus-10%, which, along with the other audit adjustment, reduced the Hospital's total bill from \$74,664.69 to \$33,214.73. Ms. Wood testified that she handled previous cases for the Hospital in the same manner, and SAISD offered into evidence invoices from five prior cases in which the

⁶ 28 TEX. ADMIN. CODE (TAC) § 134.401(c)(6).

Hospital submitted separate invoices that listed implantables at cost-plus-10%. Those invoices were submitted separately from the Hospital's original bill, which charged implantables at the usual and customary charge. After reducing the bill in this case to \$33,214.73 for audit items and implantables, Ms. Wood then further reduced the bill by calculating reimbursement at 75% of this amount, or \$24,911.05. Ms. Wood did not explain why she used the stop-loss methodology, as the audited bill

under her calculation did not reach the \$40,000 stop-loss threshold, except to say it was in accordance with Commission guidelines. Ms. Wood added, however, that her calculations using the stop-loss methodology provided the hospital a greater reimbursement than using the per-diem methodology.⁷

In summary, SAISD argues that it properly reimbursed surgical implantables at cost-plus-10%, that the MRD decision should be reversed, and that SAISD should recover a refund of \$12,421.32.

3. Hospital's Arguments

The Hospital states that its total bill of \$74,664.69 should only be reduced for personal items, unsupported charges, and unrelated charges in order to determine whether the "total audited charges" exceed the Commission's \$40,000 stop-loss threshold. In this case, those adjustments total \$2,925.10 and produce an audited balance of \$71,739.59, which exceeds the stop-loss threshold.⁸ Therefore, the Hospital contends that it is entitled to reimbursement of 75% of \$71,739.59 (which equals \$53,804.69), less \$37,332.37 previously paid, for a current balance due of \$16,472.32.

The Hospital argues that SAISD erroneously deducted implantable charges as part of the initial audit in order to reduce the "total audited charges" below the \$40,000 stop-loss threshold. It states that the TWCC rules specify the deductions to be made to determine the audited charges for purposes of calculating the stop-loss threshold. These are personal items (such as telephone and television), undocumented services, and services not related to the compensable injury; but they do not include a deduction for surgical implantables.⁹

The Hospital notes that the general rule for hospital charges is set out in 28 TAC § 134.401(b)(2)(A), which provides:

All hospitals shall bill their usual and customary charges. The basic reimbursement for acute care hospital inpatient services shall be the lesser of:

⁷ See footnote 3.

⁸ 28 TEX. ADMIN. CODE § 134.401(c)(6).

⁹ 28 TEX. ADMIN. CODE § 134.401(c)(6)(A)(v).

- (1) a rate negotiated for workers' compensation cases pre-negotiated between the carrier and hospital;
- (ii) the hospital's usual and customary charges; or
- (iii) reimbursement as set out in subsection (c) of this section for that admission.

The Hospital states that it has no negotiated rate with SAISD and its usual and customary charges exceed the reimbursement methods under subsection (c) of § 134.401; consequently, its reimbursement in this case should be calculated under subsection (c) of the rule. The Hospital then notes that subsection (c) contains four independent reimbursement methodologies:

- the standard per-diem method [(c)(1)-(3)];
- additional reimbursements (that apply only to the per-diem methodology) for implantables, orthotics, prosthetics, MRIs, CAT scans, hyperbaric oxygen, blood, air ambulance, and pharmaceuticals charged at greater than \$250 per dose [(c)(4)];
- a special methodology for trauma, burns, and HIV cases [(c)(5)]; and
- the stop-loss methodology for cases in which audited charges exceed the \$40,000 stop-loss threshold [(c)(6)].

The Hospital complains that SAISD has erroneously used the cost-plus-10% *reimbursement methodology* for implantables in subsection (c)(4) as an *audit methodology* to determine whether the entire admission reaches the stop-loss threshold. It argues that the TWCC rules do not provide that the cost-plus-10% reimbursement methodology is a proper audit item. Instead, the Hospital emphasizes that § 134.401(c)(6)(A)(v) provides that the audit to calculate the stop-loss threshold should only examine hospital bills for usual and customary charges, personal items, undocumented services, and unrelated services. Then, the Hospital states, only after the audit has been completed can the carrier determine which reimbursement methodology to follow – the per-diem methodology, with separate reimbursement for implantables, or the stop-loss methodology.

The Hospital also criticizes prior SOAH decisions which have concluded that a hospital's charges for implantables should be set at cost-plus-10% when calculating a hospital's audited charges for purposes of the stop-loss threshold.¹⁰ In particular, the Hospital argues that those decisions failed to give proper weight to the Commission's own interpretation and application of the stop-loss rule. It points out that the Commission has interpreted the stop-loss rule consistent with the MRD's decision in favor of the Hospital in this case. The Hospital offered into evidence the Commission's "Question Resolution Log," which gives guidance to MRD employees for interpreting various Commission rules.

The Question Resolution Log states the following concerning implantables and calculating the stop-loss threshold:

¹⁰ Docket No. 453-00-2092.M4 (April 24, 2001); Docket No. 453-01-1612.M4 (September 6, 2001); Docket No. 453-03-0910.M4 (April 10, 2003); Docket No. 453-03-1626.M4 (May 20, 2003).

DATE REC'D	QUESTION/PROBLEM	DATE ANS'D	RESOLUTION
10/12/00 01-03	<p data-bbox="337 212 795 296">STOP LOSS REIMBURSEMENT / RULE 134.401 / ACUTE CARE INPATIENT GUIDELINE / AUDIT / MEDICAL BILL</p> <p data-bbox="337 331 795 394">How is the stop loss provision applied to the following situation?</p> <p data-bbox="337 426 795 636">The hospital bill is \$55,000. About \$20,000 are charges for implantables. Is the bill reimbursed 75% of total bill per the stop loss method or is the charge for the implantables carved out to leave the remainder now under the stop-loss threshold and paid per diem?</p>	10/17/00	<p data-bbox="959 212 1421 422">According to the Acute Care Inpatient Fee Guideline 134.401(c)(6)(A) stop loss threshold is determined by total audited charges. An audit of the total bill allows for the deduction of charges such as personal items unrelated services and services not documented.</p> <p data-bbox="959 457 1421 636">Section (6)(A)(v) states what can be deducted by the carrier in the audit. The carrier should not confuse the carve-out items identified in section (c)(4) as items that can be deducted in an audit or paid separately.</p> <p data-bbox="959 672 1421 882">Therefore, reimbursement for the entire admission including charges for items in (c)(4) is calculated by the stop loss reimbursement amount of 75% times the total audited charges. In the instant case $\\$55,000 \times 75\% = \\$41,250$ reimbursement to the hospital.</p>

The Hospital states that the Commission's interpretation of its own rules is entitled to great deference, and it argues that SOAH must accept the Commission's interpretation unless it is plainly erroneous. In the Hospital's view, the prior SOAH decisions failed to follow this fundamental rule of agency deference.

The Hospital also rejects the notion that hospitals can charge artificially inflated prices for implantables in order to push their bills above the stop-loss threshold. It points out that the Commission's rules require hospitals to bill their "usual and customary" charges and provide that all hospital charges are subject to audit.¹¹ Thus, if a carrier audit showed that a hospital's bill for implantables exceeded its usual and customary charges, the bill could be reduced accordingly. The hospital also offered testimony from Ms. Kimberly Brown, who handles billing for four Methodist Hospitals. She testified that the charges for implantables at issue in this case are its usual and customary charges and that the Hospital charges the same price for all patients, including private-pay patients and patients under Medicare or health insurance. Ms. Brown further testified that Workers' Compensation patients comprise only 4-5% of the Hospital's total patient load, and the Hospital does not set its charges for surgical implantables for the purpose of reaching the TWCC stop-loss threshold. Instead, Ms. Brown testified, the price markup on implantables is part of a comprehensive

pricing analog for all hospital services, and the price markup is used to help defray hospital overhead expenses such as administration, collections, instrument sterilization, security, nursing costs, and

¹¹ 28 TAC § 134.401(b)(2)(A) (usual and customary charges); 28 TAC 134.401(b)(2)(C) (audits).

other items. Further, she stated that competitive pressures from other hospitals prevent the Hospital from charging excessive prices.

The Hospital also argues that if audited charges for the stop-loss methodology included reducing implantables to cost-plus-10%, as argued by SAISD, then a hospital would not even be reimbursed its actual costs if the \$40,000 threshold were met and the 75% reimbursement methodology applied. Under this scenario, the hospital would only be reimbursed 82.5% of its actual costs for implantables. This occurs because the price is marked up 10% for the audit, but then marked down 25% under the stop-loss reimbursement methodology.¹² Yet, the Hospital contends, the Commission adopted the guidelines to assure continued availability of care for injured workers, and the Commission did not intend that providers suffer out-of-pocket losses to treat injured workers.

In short, the Hospital argues that auditing hospital charges to determine whether the stop-loss 75% reimbursement methodology applies does not include reducing implantables to cost-plus-10%. Instead, the cost-plus-10% for implantables is simply an additional reimbursement that applies only to the per-diem reimbursement methodology. When the Hospital's charges in this case are properly audited, the Hospital contends that it is entitled to payment under the stop-loss-75% reimbursement methodology, which entitles it to an additional payment of \$16,472.32.

III. ALJ's Analysis

The Commission's rules contain several basic principles that apply to this case. These include:

- All hospitals shall bill their usual and customary charges. (28 TAC § 134.401(b)(2)(A)).
- All charges submitted by hospitals are subject to audit as described in Commission rules. (28 TAC § 134.401(b)(2)(C)).
- A carrier's audit of a hospital bill may include examination for:
 - (1) compliance with the fee guidelines established by the Commission;
 - (2) compliance with the treatment guidelines established by the Commission;
 - (3) duplicate billing;
 - (4) upcoding and/or unbundling;
 - (5) billing for treatments and services unrelated to the compensable injury;
 - (6) billing for services not documented or substantiated, when documentation is required in accordance with Commission fee guidelines or rules in effect for the dates of service;
 - (7) accuracy of coding in relation to the medical record and reports;
 - (8) correct calculations; and/or
 - (9) provision of unnecessary and/or unreasonable treatment(s) and/or

¹² For example, an implantable that cost a hospital \$100 would be marked up 10% to \$110 but then reimbursed at 75%, resulting in a reimbursement of \$82.50 for an item with an actual cost of \$100 ($\$100 \times 1.10 = \$110.00 \times 0.75 = \82.50).

services. (28 TAC § 133.301(a)).

- The basic reimbursement for acute care hospital inpatient services is the lesser of:
(1) a rate for worker's compensation cases pre-negotiated between the carrier and the hospital;
(2) the hospital's usual and customary charges; or
(3) reimbursement as set out in subsection (c) of 28 TAC § 134.401.
(28 TAC § 134.401(b)(2)(A)).
- In this case, subsection (c) of 28 TAC § 134.401 is the lesser of the three options. That subsection provides for the following reimbursement methodologies:
(1) Standard per-diem amounts as follows: Medical— \$870; Surgical—\$1,118; Intensive Care Unit (ICU)/Cardiac Care Unit (CCU)—\$1,560. Reimbursement by per-diem rates applies unless an exception or special reimbursement provision controls. The surgical rate applies to this case.
(2) Special reimbursements in addition to the per diem rate, including surgical implantables and orthotics reimbursed at cost to the hospital plus 10%.
(3) Stop-loss reimbursement, as an exception to the standard per-diem amounts. Stop-loss reimbursement is 75% of the hospital's total "audited charges." For this methodology to apply, a hospital's total audited charges must exceed \$40,000, the minimum stop-loss threshold. Stop-loss reimbursement is in lieu of and not in addition to per-diem and special reimbursement amounts.
- "Audited charges" for purposes of calculating the stop-loss threshold are those charges that remain after a bill review by the insurance carrier has been performed.

Charges that may be deducted are for personal items (e.g., telephone, television). If an on-site audit is performed, charges for services that are not documented as rendered during the admission and services that are not related to the compensable injury may also be deducted. The formula to obtain audited charges for purposes of calculating the stop-loss threshold is: Total Charges - Deducted Charges = Audited Charges. (28 TAC § 134.401(c)(6)(A)(v)).

The issue in this case is whether the Hospital is entitled to reimbursement under the stop-loss methodology or under standard per-diem methodology, with additional payments for surgical implantables. Underlying this issue is the question of whether deductions from the Hospital's bill for calculating "audited charges" for purposes of the stop-loss threshold are limited to those deductions described in § 134.401(c)(6)(A)(v)—personal items, undocumented charges, and services unrelated to the compensable injury—or whether additional audit deductions can be made for other items listed in § 133.301(a). Initially, the Hospital argued that subsection (c)(6)(A)(v) is unambiguous and that audit deductions for calculating the stop-loss threshold are limited to personal items, undocumented charges, and unrelated charges. But in response to the argument that a Hospital could bill any amount it wanted, in order to inflate a bill, the Hospital agreed that a carrier could also make an audit deduction if a hospital billed in excess of its usual and customary charges. SAISD provided little evidence or argument on this question other than to state that it was entitled to reduce the billings for surgical implantables to the Hospital's cost plus 10%.

Prior SOAH decisions have concluded that the audit deductions for calculating the stop-loss threshold are not limited to the three items listed in subsection (c)(6)(A)(v) and may also include the

items listed in § 133.301(a).¹³ The ALJ agrees with those decisions and finds their reasoning to be sound. Section 134.401(b)(2)(C) provides, “*All charges* submitted by hospitals are subject to audit as described in Commission rules,” and § 133.301 states that insurance carriers “*shall* retrospectively review all complete medical bills” and pay or deny the bills in accordance with the Worker’ Compensation Act and the Commission’s rules and fee guidelines. Clearly, the Commission recognizes that auditing is an important component in the worker’s compensation system. Further, it is unreasonable to conclude that subsection (c)(6)(A)(v) would require a carrier to ignore hospital billing errors such as incorrect calculations, unreasonable or unnecessary treatments or services, upcoding, unbundling, duplicate billing, and the like. Even the Hospital has agreed that a Carrier could make additional audit reductions if a hospital failed to bill its usual and customary charges as required by Commission rules. Indeed, if under the stop-loss methodology carriers were limited to auditing only for the items listed in subsection (c)(6)(A)(v), then the carriers would have to reimburse hospitals for 75% of the billed charges regardless of whether treatment was delivered in accordance with the Act and Commission rules and regardless of how exorbitant the charges might be. Therefore, the ALJ concludes that when the Commission’s rules are considered as a whole, it is clear that audit deductions for calculating the stop-loss threshold are not limited to the items listed in subsection (c)(6)(A)(v) and may include additional items listed in § 133.301(a).

However, the conclusion that a carrier’s audit is not restricted to the items listed in subsection (c)(6)(A)(v) does not completely resolve the issue in this case. A further underlying question is whether reimbursement for surgical implantables at a hospital’s cost-plus-10% is a proper audit item or is merely an additional reimbursement amount applicable to the per-diem methodology. 28 TAC § 134.401(b)(2)(B) provides:

Additional reimbursements as outlined in subsection (c)(4) of this section are determined on a case-by-case basis within the guidelines established for the specific services rendered.

Then, subsection (c)(4) provides:

(4) Additional Reimbursements. All items listed in this paragraph shall be reimbursed in addition to the normal per diem based reimbursement system in accordance with the guidelines established by this section. *Additional reimbursements apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.*

(A) 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

¹³ See decisions cited in footnote 10.

. . . (Emphasis added).

The ALJ concludes that the subsection allowing additional reimbursement for implantables is only a part of the per-diem reimbursement methodology and is not a proper audit item to determine which methodology applies. First, the language in subsection (c)(4) states that additional reimbursement applies “only to bills that do not reach the stop-loss threshold.” The ALJ believes that the Commission intended this provision to prevent a windfall to hospitals by making clear that hospitals are not entitled to both stop-loss reimbursement and additional reimbursement for implantables. In other words, if a hospital’s audited bill exceeds \$40,000 and the hospital qualifies for reimbursement under the stop-loss methodology, then the hospital is not entitled to additional reimbursement for implantables as it would be under the per-diem methodology.

But treating this cost-plus-10% reimbursement for implantables as an audit item causes an equally undesirable result of shortchanging hospitals by reimbursing them less than their actual cost. As noted previously, under the methodology proposed by SAISD and the prior SOAH decisions, a hospital would be reimbursed 110% of its actual cost for implantables under the per-diem methodology but only 82.5% of its cost for under the stop-loss methodology.¹⁴ Thus, SAISD’s interpretation produces a result that is the exact opposite of the statement in § 134.401(c)(6) that the stop-loss methodology was “established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” In other words, the ALJ finds that SAISD proposal is contrary to the Commission’s rules because it reimburses hospitals at less than their actual costs for implantables, which is not “fair and reasonable compensation” as contemplated by the rule.

The ALJ also concludes that the Commission’s interpretation of its rules in the Question Resolution Log is consistent with the Commission’s rules. The Question Resolution Log is an internal document for use by MRD, and the ALJ is unclear about how much weight it should be given. Nevertheless, the ALJ finds that it does have some persuasive authority and supports the position urged by the Hospital in this case.

The prior SOAH decisions that adopted the position advocated by SAISD expressed serious concern about cost control and the high price markups for surgical implantables. The ALJ in this case is likewise concerned and notes that the Hospital marked up its price for the implantables at issue to 378% of cost.¹⁵ However, SAISD, which has the burden of proof in this case, offered no evidence that the prices billed were not the Hospital’s usual and customary charges (which the Hospital must bill under Commission rules), that the price markup was unreasonable, or that the final price was not fair and reasonable. In contrast, the Hospital offered testimony that the implantables were billed at the Hospital’s usual and customary charge, that all patients are billed the same price for these items, and that the price markup is used to cover various overhead costs. Therefore,

¹⁴ See footnote 12 and accompanying text above.

¹⁵ $\$54,332 / \$14,361 = 3.783$

although the ALJ has concerns about the high price markup made by the Hospital, under the record in this case, the ALJ does not find that SAISD established that the prices charged by the Hospital were unreasonable or otherwise unlawful.

In summary, the ALJ concludes that audit deductions for calculating the stop-loss threshold are not limited to the items listed in § 134.401(c)(6)(A)(v) and may include additional items listed in § 133.301(a); that a hospital's charges for surgical implantables should not be reduced to the hospital's cost-plus-10% when calculating whether the stop-loss threshold has been reached; and that SAISD did not establish by a preponderance of the evidence that the prices charged by the Hospital in this case for surgical implantables were unreasonable. Therefore, the ALJ denies SAISD's appeal and orders that SAISD pay \$16,472.32 additional reimbursement to the Hospital.

IV. FINDINGS OF FACT

1. On ____, ____ sustained a compensable injury in the course and scope of her employment with the San Antonio Independent School District (SAISD).
2. On September 21, 1999, SAISD provided workers' compensation insurance through self-insurance.
3. SAISD contracts with Tristar Risk Management / EOS Claims Services for the administration of its workers' compensation insurance.
4. On dates of service June 20, 2001, through June 26, 2001, Metropolitan Methodist Hospital (Hospital) provided medical treatment to ____ for her workers' compensation injury.
5. ____ underwent a laminectomy and decompressions with fusion at the L3-4 and L4-5 levels.
6. SAISD preauthorized ____'s surgery.
7. ____ was admitted to the Hospital on June 20, 2001, and discharged on June 26, 2001.
8. The Hospital submitted itemized billing totaling \$74,664.69 for the services provided to ____ for the dates of service June 20, 2001, through June 26, 2001.
9. SAISD reviewed the bills submitted by Hospital.
10. The Hospital's bill included charges totaling \$54,332.00 for surgical implantables and orthotic devices used in the treatment of _____. These charges were the Hospital's usual and customary charges for these items. The Hospital's actual cost for these items totaled \$14,361.04.

11. SAISD did not perform an on-site audit of the bill but did perform a desk audit as allowed by law. Ms. Deborah Wood, Vice President of Medical Audit Consultants, performed the audit. In the audit, Ms. Wood added \$106.72 for undercharges for pharmacy items, deducted \$2,473.88 for charges not supported by documentation, and deducted \$557.94 for charges unrelated to the compensable injury. Ms. Wood also reduced charges for surgical implantables and orthotic devices from \$54,332.00 to \$15,797.14, which equals the Hospital's cost plus 10%.
12. After making her audit adjustments, Ms. Wood calculated the Hospital's bill at \$33,214.73, and she recommended reimbursement of 75% of that amount, which equals \$24,911.05.
13. The Hospital does not dispute any of the audit changes made by Ms. Wood except for the reduction of charges for surgical implantables and orthotic devices.
14. On or about July 24, 2001, prior to the desk audit, SAISD issued a payment of \$37,322.32 to Hospital for the services provided between June 20, 2001, and June 26, 2001.
15. Following completion of the desk audit on or about November 20, 2001, SAISD denied further reimbursement to the Hospital and requested recoupment in the amount of \$12,421.32.
16. The Hospital requested Dispute Resolution Services from the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) on June 7, 2002.
17. The MRD assigned Tracking Number M4-02-4501-01 to this dispute for dates of service June 20, 2001, through June 26, 2001.
18. SAISD filed a timely response with MRD on September 16, 2002.
19. On October 24, 2002, MRD issued its Findings and Decision, ordering SAISD to remit an additional \$18,176.14 plus interest to the Hospital.
20. SAISD timely filed a request for a contested case hearing on the MRD's decision.
21. All parties were provided not less than 10 days notice of hearing and of their rights under the applicable rules and statutes.
22. On August 11, 2003, ALJ Thomas H. Walston convened a hearing on the merits at the SOAH hearing facilities in Austin, Texas. Attorney Dean G. Pappas represented SAISD and attorney Scott Placek represented the Hospital. The Commission did not participate in the hearing. The hearing concluded and the record closed the same day.

23. The Hospital's total audited charges under § 134.401(c)(6)(A)(v) are \$71,739.59, which allows the Hospital to obtain reimbursement under the Texas Workers' Compensation Commission's stop-loss reimbursement methodology.
24. Under the stop-loss methodology, the Hospital is entitled to total reimbursement of \$53,804.69. After deduction of SAISD's prior payment of \$37,332.37, the Hospital is entitled to additional reimbursement of \$16,472.32.

V. CONCLUSIONS OF LAW

- 1 The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented, pursuant to TEX. LAB. CODE ANN. § 413.031.
- 2 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. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
- 3 SAISD timely filed notice of appeal, as specified in 28 TEX. ADMIN. CODE (TAC) §148.3.
- 4 Proper and timely notice of the hearing was provided to the parties according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
- 5 SAISD had the burden of proof in this proceeding pursuant 28 TAC § 148.21(h) and (i).
- 6 As specified in 28 TAC § 134.401(c)(6), all inpatient services provided by an acute care hospital for a surgical admission will be reimbursed at 75% of total audited charges under the stop-loss methodology when the total audited charges exceed \$40,000.
- 7 Applying the stop-loss methodology in this case, the Hospital is entitled to total reimbursement of \$53,804.69.
8. As specified in Finding of Fact No. 14, SAISD has already reimbursed the Hospital \$37,332.37.
9. Based on the foregoing findings of fact and conclusions of law, the SAISD owes the Hospital additional reimbursement of \$16,472.32.

ORDER

It is hereby ORDERED that the San Antonio Independent School District shall reimburse the Metropolitan Methodist Hospital the additional sum of \$16,472.32, plus interest, for services acute care hospital services rendered to ___ between June 20 and June 26, 2001.

SIGNED October 9, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE**