SOAH DOCKET NO. 453-03-2976.M4
MDR Tracking No. M4-02-4021.01

SOUTHWEST HELICOPTERS	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
TRANSCONTINENTAL INS. CO.	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Claimant, sustained a compensable workers' compensation injury while working on, when he fell approximately 30 feet to the ground. Southwest Helicopters, Inc. (Provider) provided emergency air ambulance services to Claimant and requested reimbursement of $4,020.50 from Transcontinental Insurance Company (Carrier). Carrier reimbursed Provider $756.00, asserting that Provider's charges were not fair and reasonable. Provider requested dispute resolution from the Texas Workers' Compensation Commission's Medical Review Division (MRD). MRD ordered Carrier to reimburse Provider an additional $300. Provider appealed MRD's decision to the State Office of Administrative Hearings (SOAH). The ALJ finds that the fair and reasonable amount to charge for Provider's air ambulance services is $2,955.42.

I. Jurisdiction, Notice, and Procedural History

The hearing convened on July 29, 2003, before Administrative Law Judge (ALJ) Catherine C. Egan. Attorney Jane Lipscomb Stone appeared for Carrier. Barry Ashburn, Provider's lead reimbursement specialist, represented Provider telephonically. The staff of the Texas Workers' Compensation Commission waived appearance and did not appear. The parties did not contest notice or jurisdiction, therefore, the ALJ will address those matters in the findings of fact and conclusions of law below.

II. Discussion

A. Background

On, Claimant, a 21-year-old man, fell approximately 30 feet to the ground while working. Provider, an emergency air ambulance service, was dispatched to the scene.[1] By the time Provider arrived, the Belton Fire Department had applied a splint to Claimant's leg. Provider immobilized Claimant's neck and spine, put him in traction, administered oxygen, and began cardiac monitoring.[2] The flight nurse and flight paramedic checked off on Claimant's chart that Claimant had experienced multiple traumas from "a fall greater than 15 feet," and that there was a "great potential to experience

[1]Carrier did not deny this claim for lack of medical necessity. Therefore, that issue will not be considered in this appeal.

[2]Ex. 1 at 13.

injury to spinal cord column or neurological deficit."[3] Provider transported Claimant to Scott and White Hospital.

The Carrier denied most of Provider's claims as "MAR" (maximum allowable reimbursement). According to Carrier this meant the charge was not fair and reasonable. Provider charged and Carrier paid the following:

Service Provided	**Provider Charged**	**Carrier paid**
Helicopter Transport (Base Rate)	$3,200.00	$500.00
Mileage	$315.00 ($45 per mile while Claimant in the helicopter)	$56.00
Extra Ambulance Attendant	$300.00	$ -0-
Supplies	$205.50 (monitoring tray and adult oxygen device tray)	$200.00
TOTAL	**$4,020.50**	**$756.00**

B. Legal Standards

Provider has the burden of proof in this proceeding. 28 TAC § 148.21(h) and (i). Section § 413.011(d) of the Texas Labor Code provides in pertinent part,

> Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. . . .

The Commission rules state that where reimbursement for services is not identified in an established fee guideline its "shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, Section 413.011, until such period that specific fee guidelines are established by the commission."[4]

A fair and reasonable reimbursement is defined as:

[3] Ex. 1 at 15.

[4] 28 TEX. ADMIN. CODE (TAC) § 134.1(c).

Reimbursement that meets the standards set out in § 413.011 of the Texas Labor Code, and the lesser of a health care provider's usual and customary charge, or

(A) the maximum allowable reimbursement, when one has been established in an applicable Commission fee guideline,
(B) the determination of a payment amount for medical treatment(s) and/or services(s) for which the Commission has established no maximum allowable reimbursement amount. . . .[5]

Because this dispute involved health care for which the Commission had not established a maximum allowable reimbursement, Provider should have submitted to MRD documentation "that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement in accordance with § 133.1 of this title (relating to Definitions) and §134.1 of this title (relating to Use of the Fee Guidelines). . . ."[6]

III. Fair and Reasonable Reimbursement

Provider argued that the reimbursement paid by Carrier was the amount usually paid for a ground ambulance, not emergency air ambulance service. Mr. Ashburn testified that Provider's charges were in the middle of what other air ambulance service providers in the area charged. However, Provider offered no tangible evidence to support this. Provider admitted that Medicare did not pay Provider's base rate, but instead paid a percentage of the base rate. At the time of this incident, Mr. Ashburn testified that Medicare was paying Provider $2,512.12 as a base rate, plus mileage at $20.13 per mile. Medicaid allowed only $609 for the base rate and $16.24 per mile, while private insurance generally paid Provider the full bill.

Carrier argued that in the absence of fee guidelines, the Carrier should be able to look at statutory standards to determine the amount owed. Provider had the burden to show its charges were fair and reasonable. According to Joyce Maxam, Carrier's expert, the base amount paid by Medicare at the time, $2,314.51, was fair and reasonable for air ambulance service.[7] Furthermore, absent evidence from Provider that the $45.00 per mile charge was fair and reasonable, Carrier argued, Provider is not entitled to this rate.

Carrier offered little evidence to support its position that Provider was not entitled to payment for the extra attendant as ordered by MRD. On this issue, Carrier shouldered the burden of proof. According to Provider, it is a requirement that both a nurse and paramedic be in attendance in an air ambulance, and therefore, it is entitled to payment for the extra attendant. Carrier argued that all ambulances must have both a nurse and paramedic in attendance, and therefore it should not be an added charge. However, Carrier denied this claim in the Explanation of Benefits (EOB) as "G." According to Carrier's EOB, the denial code "G" is defined as "Unbundling." MRD did not find this

[5]28 TAC § 133.1(a)(8).

[6]28 TAC 133.307(g)(3)(D).

[7]This was the amount paid by Medicare at the time.

a sufficient explanation and determined the charges for this service was proper. The ALJ finds that Carrier did not provide sufficient evidence to justify the denial of this portion of the claim.

Provider offered no evidence to challenge the amount paid by Carrier for the supplies. However, this is not surprising because the Carrier paid $200.00 out of the $205.50 charged by Provider for these supplies.

Based on this record, the Administrative Law Judge finds that MRD's decision to reimburse $300.00 is upheld. As for the remainder of the claim, Carrier's expert agreed that the amounts paid by Medicare for air ambulance services were fair and reasonable. Medicare pays a base rate for the helicopter of $2,314.51, and $20.13 for mileage. Likewise, Provider agreed it had accepted the Medicare amount as total payment from Medicare patients for the same type of services provided to the Claimant. Therefore, the ALJ finds the following amounts to be fair and reasonable for the services provided by Provider.

Helicopter Transport (Base Rate)	$2,314.51
Mileage	$ 140.91
Extra Ambulance Attendant	$ 300.00
Supplies	$ 200.00
Total	**$2,955.42**

IV. Findings of Fact

1. The claimant, (Claimant) sustained a compensable workers' compensation injury while at work on___. At the time of the injury, Transcontinental Insurance Company (Carrier) was the workers' compensation insurance carrier for Claimant's employer.

2. The provider, Southwest Helicopters, Inc. (Provider) is an emergency air ambulance service.

3. On, when Claimant fell approximately 30 feet to the ground, Provider was dispatched to transport Claimant by helicopter to the nearest hospital. Provider arrived on the scene, provided medical services and supplies to Claimant, and air evacuated him to the nearest hospital.

4. Provider's usual and customary charge for air ambulance services included a base rate of $3,200.00 for the helicopter, a rate of 45.00 per mile for mileage ($315.00), $300.00 for an extra ambulance attendant, and $205.50 for supplies.

5. Provider requested reimbursement in the amount of $4,020.50 from Carrier for the services provided to Claimant.

6. Carrier did not dispute the medical necessity of the services, but was unwilling to reimburse Provider more than $500.00 for the base rate, $56.00 for the mileage and nothing for the extra attendant. Carrier reduced the amount paid for the supplies to $200.00.

7. Carrier's Explanation of Benefits stated that the reason for the reduction in the amount paid for the base rate, mileage, and the supplies was "No MAR".

8. The Texas Workers' Compensation Commission (Commission) adopted a 1996 Medical Fee Guideline under 28 TEX ADMIN. CODE (TAC) § 134.201, setting out the maximum allowable reimbursement rate (MAR) for various medical services and supplies.

9. The Commission did not adopt a MAR for air ambulance services in the 1996 Medical Fee Guideline and therefore Provider is to be reimbursed a fair and reasonable amount.

10. After Carrier refused to pay the Provider the full amount charged for the air ambulance services, Provider file a Request for Medical Dispute Resolution with the Commission.

11. The Commission's Medical Review Division (MRD) ordered Carrier to reimburse Provider an additional $300.00 for the extra ambulance attendant.

12. Provider appealed MRD's decision to the State Office of Administrative Hearings.

13. The staff of the Texas Workers' Compensation Commission issued a notice of hearing on May 1, 2003, notifying the parties of the hearing.

14. The hearing was held on July 29, 2003. Provider and Carrier appeared and participated in the hearing. The staff of the Commission waived appearance and did not appear.

15. In December 2001, Medicare's reduced payment paid a base rate of $2,314.51 for air ambulance services.

16. Provider accepted the Medicare's reduced payment for the same type services provided Claimant.

17. Carrier's expert agreed that the amounts paid by Medicare for air ambulance services were fair and reasonable.

18. A fair and reasonable amount for the helicopter transport base rate at the time of the incident was $2,314.51.

19. In December 2001, Medicare paid $20.13 per mile for mileage costs associated with air ambulance service.

20. Provider accepted Medicare's reduced payment for the same type services provided Claimant.

21. A fair and reasonable rate for the mileage at that time was $20.13 per mile.

22. Provider transported Claimant seven miles.

23. Provider did not offer sufficient evidence to show that $200.00 was not a usual or customary rate, nor a fair and reasonable rate of reimbursement for the supplies.

24. Carrier did not offer sufficient evidence to show that $300.00 was not a usual or customary rate, nor a fair and reasonable rate of reimbursement for the second attendant in the helicopter.

V. Conclusions of Law

1. The Texas Workers' Compensation Commission (the Commission) has jurisdiction over the issue presented pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. § 413.031.

2. The State Office of Administrative Hearings has jurisdiction over all matters related to the hearing in this case, including the issuance of this decision and order, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and pursuant to § 413.031(d) of the Act.

3. Notice of the hearing was proper and timely, as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.

4. As the party appealing the adverse decision of the Commission's Medical Review Division (MRD) regarding the base rate and mileage charged by Provider, Provider had the burden of proving by a preponderance of the evidence that the base rate and mileage charged were fair and reasonable. TEX. LABOR CODE § 413.031 and TEX. ADMIN. CODE § 148.21(h) and (i).

5. Procedures for which there is no Maximum Allowable Reimbursement in the Medical Fee Guideline are reimbursed at the fair and reasonable rate. 28 TEX. ADMIN. CODE § 134.201.

6. Based on the Findings of Fact, a fair and reasonable rate for air ambulance services was $2,955.42 ($2,314.51 base rate, $140.91 mileage, $300.00 extra attendant, and $200.00 supplies).

7. Based on the Findings of Fact, Carrier did not prove that $300.00 was not a usual or customary charge for the extra attendant, nor a fair and reasonable rate.

8. Based on the Findings of Fact, Provider is entitled to be reimbursed a total of $2,955.42 for air ambulance services provided to Claimant, less any amount already paid.

ORDER

IT IS, THEREFORE, ORDERED that Transcontinental Insurance Company shall be required to reimburse Southwest Helicopters, Inc., a total of $2,955.42 for helicopter emergency services provided to Claimant less any amount already paid.

SIGNED September 26, 2003.

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS