SOAH DOCKET NO. 453-03-0543.M4 - MDR Tracking No. M4-02-3105-01
SOAH DOCKET NO. 453-03-2551.M4 - MDR Tracking No. M4-02-2437-01

SOAH DOCKET NO. 453-03-3091.M4 - MDR Tracking No. M4-02-4823-01

VISTA HEALTHCARE, INC.	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
ARGONAUT SOUTHWEST	§	
INSURANCE COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. INTRODUCTION

Vista Healthcare, Inc. (Vista) requested a hearing to contest decisions by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denying additional payment for ambulatory surgical center services.[1] Vista operated ambulatory surgical centers (ASCs) in Houston, Texas, and provided surgical services to patients not requiring in-patient hospitalization. As related to these dockets, Vista billed Argonaut Southwest Insurance Company (Carrier) for services provided to three different patients.[2] Carrier reimbursed less than the billed amount and Vista requested medical dispute resolution before MRD, which subsequently declined to order any additional payment for the services. In each case, Vista has the burden of proving that it is entitled to additional payment for the services rendered.[3] After considering all of the evidence and arguments, the Administrative Law Judge (ALJ) concludes that Vista has failed to meet that burden; therefore, it is not entitled to any additional reimbursement.

[1] Effective September 1, 2005, the functions of the Commission were transferred to the newly-created Division of Workers' Compensation of the Texas Department of Insurance. This case arose before that transfer of authority, but was delayed in going to hearing due to litigation that had a bearing on the handling of ambulatory surgical center cases.

[2] Because these cases were heard together, the ALJ issues this single decision in the three dockets involved.

[3] Despite Vista's assertion to the contrary, Carrier has no burden of proof in this matter. It is Vista that seeks a higher level of reimbursement than that already approved by MRD. Accordingly, the ALJ will order no additional reimbursement unless Vista shows itself entitled to such.

II. APPLICABLE LAW

The Texas Workers' Compensation Act (Act) is found at TEX. LAB. CODE ANN. § 401.001, et seq. Under the Act, workers' compensation insurance covers all medically necessary health care, including all reasonable medical aid, examinations, treatments, diagnoses, evaluations, 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.[4] Section 413.011 of the Act provides that through its rules the Commission shall establish medical policies and guidelines relating to fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services. That section further provides that 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.[5] Moreover, 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. In setting such guidelines, the increased security of payment afforded by the Act must be considered.

However, during all time periods relevant to this case, the Commission had not established any payment guidelines for ASC services. In such a situation, an insurance carrier is required to reimburse the services at fair and reasonable rates as described in Section 413.011(d) of the Act.[6]

Fair and reasonable reimbursement is defined as:

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 service(s) for which the Commission has established no maximum allowable reimbursement amount, or

[4] TEX. LAB. CODE ANN. § 401.011(19) and (31). Unless otherwise noted, all cites to statutes and rules are to those in effect in 2001—during the relevant time periods in issue in this case.

[5] § 413.011(d) of the Act.

[6] 28 TAC § 134.1(f).

(C) a negotiated contract amount.[7]

Therefore, when the Commission has not established a fee guideline for a particular procedure, service, or item, the reimbursement amount is to be determined using the same factors used by the Commission in setting fee guidelines. The appropriate "fair and reasonable" reimbursement is the lowest one that ensures the quality of medical care and accounts for the factors used by the Commission in setting fee guidelines. As noted by the Texas Supreme Court in *Texas Workers' Compensation Commission v. Patient Advocates of Texas*,[8] the Commission's rules require that in the absence of a fee guideline the carrier must develop and consistently apply a methodology that treats all similarly situated providers equally.[9]

Additionally, the ALJ took official notice of the ASC Fee Guideline subsequently adopted by the Commission and set forth at 28 TEX. ADMIN. CODE § 134.402. Although not legally controlling for services provided prior to September 1, 2004, the Commission's ASC Fee Guideline does show the fee the Commission subsequently considered fair and reasonable for the ASC services provided.[10] The reimbursement received by Vista exceeded the reimbursement it would have received had the Commission's ASC Fee Guideline been in effect.

III. DISCUSSION AND ANALYSIS

In the three dockets involved in this case, the claimant sustained a work-related injury. The compensability of the injuries is not in dispute. The claimants all received care at a Vista ASC facility. The physicians performing the treatments billed Carrier, and the physicians' charges are not

[7] 28 TAC § 133.1(a)(8).

[8] 136 S.W.3d 643 (Tex. 2004).

[9] The Dispute and Audit Rules contain specific standards that a carrier must follow in calculating fees when a MAR has not been established: (1) the methodology used must be consistently applied to determine fair and reasonable reimbursement amounts that are uniformly paid for similar procedures under similar circumstances; (2) the method must be explained and documented and referenced in the claim file; and (3) any deviation from the usual method established to calculate fees must be explained and documented. 28 TEX. ADMIN. CODE § 133.304(i). With regard to the first requirement, TWCC defined "fair and reasonable reimbursement" to mean a reimbursement that meets the standards set out in section 413.011 of the Labor Code. Id. § 133.1(a)(8). Thus, where no MARs have been established, carriers are required to apply methodologies that determine fair and reasonable medical fees, ensure quality medical care to injured workers, and achieve effective cost control. TEX. LAB.CODE § 413.011(b). *Id.* at 656.

[10] The Commission's ASC Fee Guideline is based on Medicare's reimbursement rates.

in dispute in this proceeding; nor is there a dispute about the treatments given. Rather, what is in dispute is the amount billed separately by Vista for its facility charges associated with the procedures performed by the treating physicians.

In each of the dockets, Vista billed Carrier the charges set forth in its master charge sheet based on the surgery performed and the services provided:

> 1. In SOAH Docket No. 453-03-0543.M4, Vista billed $13,118.83, and Carrier reimbursed the sum of $2,236.00.[11] Vista claimed that fair and reasonable reimbursement is 70% of its billed charges, which equals $9,183.18. The amount sought by Vista is equal to eight times the $1,118 maximum allowable reimbursement (MAR) under the hospital fee guideline for a hospital billing for similar services for a single day.[12]
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> 2. In SOAH Docket No. 453-03-2551.M4, Vista billed $5901.53, and Carrier reimbursed the sum of $2,236.00. Vista claimed that fair and reasonable reimbursement is 70% of its billed charges, which equals $4,131.07. The amount sought by Vista is equal to twice the MAR.
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> 3. In SOAH Docket No. 453-03-3091.M4, Vista billed $5,936.05, and Carrier reimbursed the sum of $2,236.00. Vista claimed that fair and reasonable reimbursement is 70% of its billed charges, which equals $4,155.25. The amount sought by Vista is equal to twice the MAR.

To support its request for additional reimbursement, Vista tendered evidence of its billing practices and the amount of reimbursement it typically receives from other insurance carriers for the ASC services it provides. Objections to the tender were sustained and the evidence was excluded.[13] The amount Vista has received in reimbursement for its services does not establish a fair and reasonable reimbursement rate. Billed charges and historical reimbursement rates for a single facility do not show compliance with the factors identified in Section 413.011 of the Act or the Commission's rules for determining a fair and reasonable reimbursement. In addition, the evidence presented was hearsay. While evidence as to relatively uniform amounts that carriers have paid Vista and other similarly situated providers might conceivably be indicative of a fair and reasonable

[11] The procedure was less than a day and Carrier paid twice the $1,118.00 maximum allowable reimbursement under the hospital fee guideline for a hospital billing for similar services for a single day.

[12] 28 TEX. ADMIN. CODE § 134.401(c)(1).

[13] Vista's argument was that because it received reimbursement for 70% of its billed charges, then reimbursement of 70% of its billed charges is fair and reasonable.

amount, Vista offered no such evidence.

Vista contends it billed its usual and customary charges. That is not the issue. Vista must show that the reimbursement sought is fair and reasonable under the Act. The amount Vista billed and the amount Vista now seeks in reimbursement for each of the surgical procedures exceeds the amount of reimbursement a hospital would receive for the same procedure performed in the hospital, $1,118.00 a day for a patient's stay and treatment, including operating room, recovery room, medications, and supplies. Carrier in this case paid twice the MAR or $2,236.00. The amount Vista billed and the amount Vista now seeks in reimbursement for each of the surgical procedures exceeds the amount of reimbursement it would receive under the Commission's ASC Fee Guideline.

In this case, Vista has not established that either its billed charges, or 70% of its billed charges, are fair and reasonable reimbursement for the ASC services it provided. The ALJ is not persuaded that Vista is entitled to additional reimbursement.

Because Vista has failed to show that its charges (or even 70% of its charges) in this case represent a fair and reasonable reimbursement under the applicable legal guidelines, the ALJ concludes that Vista is not entitled to any additional reimbursement. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

IV. FINDINGS OF FACT

1. Vista Healthcare, Inc., (Vista) operated ambulatory surgical centers (ASCs) in Texas, and provided surgical services to patients not requiring in-patient hospitalization.

2. Each of the claimants involved in the three dockets addressed by this order received care at a Vista ASC facility for their compensable, work-related injuries.

3. The claimants each received a different surgical procedure.

4. Argonaut Southwest Insurance Company (Carrier) is the insurance carrier responsible for the workers' compensation insurance benefits administered to each of the claimants.

5. Vista billed Carrier the charges set forth in its master charge sheet, based on the surgery performed and the services provided:

    a. In SOAH Docket No. 453-03-0543.M4, Vista billed $13,118.83, and Carrier

reimbursed the sum of $2,236.00.[14] Vista claimed that fair and reasonable reimbursement is 70% of its billed charges, which equals $9,183.18. The amount sought by Vista is equal to eight times the $1,118 maximum allowable reimbursement (MAR) under the hospital fee guideline for a hospital billing for similar services for a single day.[15]

b. In SOAH Docket No. 453-03-2551.M4, Vista billed $5901.53, and Carrier reimbursed the sum of $2,236.00. Vista claimed that fair and reasonable reimbursement is 70% of its billed charges, which equals $4,131.07. The amount sought by Vista is equal to twice the MAR.

c. In SOAH Docket No. 453-03-3091.M4, Vista billed $5,936.05, and Carrier reimbursed the sum of $2,236.00. Vista claimed that fair and reasonable reimbursement is 70% of its billed charges, which equals $4,155.25. The amount sought by Vista is equal to twice the MAR.

6. Vista sought additional reimbursement and submitted to the Medical Review Division of the Texas Workers' Compensation Commission (Commission) a request for dispute resolution in each of the dockets.

7. MRD issued its Findings and Decision in each of the dockets, ordering no additional reimbursement by Carrier.

8. Vista requested a hearing in each docket, and the Commission issued a timely notice of hearing and referred the cases to the State Office of Administrative Hearings for assignment of an Administrative Law Judge to hear the disputes.

9. All parties received adequate notice of not less than 10 days of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

10. On October 8, 2007, SOAH Administrative Law Judge Stephen J. Pacey held a contested case hearing concerning the referenced dockets at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Carrier appeared at the hearing through its attorney, W. Jon Grove. Vista appeared through its attorney, Eric William Carter. The record closed on October 23, 2007, after the parties submitted closing written arguments.

11. Although Vista tendered evidence in support of its position that reimbursement of 70% of its billed charges is fair and reasonable because it received reimbursement for 70% of its billed charges, the objection to the evidence was sustained and the evidence was excluded.

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[14] The procedure was less than a day and Carrier paid twice the $1, 118.00 maximum allowable reimbursement under the hospital fee guideline for a hospital billing for similar services for a single day

[15] 28 TEX. ADMIN. CODE § 134.401(c)(1).

12. The amount Vista billed and the amount Vista now seeks in reimbursement for each of the surgical procedures exceeds the amount of reimbursement a hospital would receive for the same procedure performed in the hospital, $1,118.00 a day for a patient's stay and treatment, including operating room, recovery room, medications, and supplies.

13. The amount Vista billed and the amount Vista now seeks in reimbursement for each of the surgical procedures exceeds the amount of reimbursement it would receive under the Commission's more recently adopted ASC Fee Guideline (28 TEX. ADMIN. CODE § 134.401(c)(1)).

V. CONCLUSIONS OF LAW

1. 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. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

2. In each case in issue in this proceeding, the request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE (TAC) § 148.3.

3. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Petitioner had the burden of proof in this proceeding pursuant 28 TAC § 148.21(h) and (i).

5. Workers'compensation insurance covers all medically necessary health care, which includes all reasonable medical aid, examinations, treatments, diagnoses, evaluations, 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. It includes procedures designed to promote recovery or to enhance the injured worker's ability to get or keep employment. TEX. LAB. CODE ANN. § 401.011(19) and (31).

6. At the time Vista provided the ASC services to claimants, the Commission had not adopted an ASC Fee Guideline.

7. In the absence of a fee guideline, an insurance carrier is required to reimburse the services at fair and reasonable rates as described in Section 413.011(d) of the Labor Code and the Commission's rules. 28 TAC § 134.1.

8. Vista failed to show by a preponderance of the evidence that the amounts it seeks are fair and reasonable reimbursement for the services in issue in this proceeding.

ORDER

THEREFORE IT IS ORDERED that Vista Healthcare, Inc., is not entitled to additional reimbursement from Argonaut Southwest Insurance Company for the ASC services provided to Claimants.

SIGNED November 6, 2007.

STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS