

DOCKET NO. 453-03-3322.M4
MDR Tracking No.: M4-02-3718-01

**LAKE ARLINGTON CENTER
FOR PAIN MANAGEMENT,**
Petitioner

v.

**LIBERTY MUTUAL FIRE
INSURANCE COMPANY,**
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Petitioner Lake Arlington Center for Pain Management (Provider), now known as North Texas Pain Recovery Center, appealed the Findings and Decision of the Texas Worker's Compensation Commission's Medical Review Division (MRD) denying additional reimbursement for a pain management program. MRD found the hourly rate of \$125 paid by Liberty Mutual Fire Insurance Company (Carrier) to be fair and reasonable. The Provider billed at an hourly rate of \$175, but stated at the hearing that \$140 is appropriate.¹ This decision orders the Carrier to reimburse the Provider at the rate of \$140 per hour.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

On August 13, 2003, Administrative Law Judge (ALJ) Michael J. Borkland convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Petitioner was represented by Peter Rogers, attorney. Attorney Charlotte Salter represented the Carrier. Notice and jurisdiction were not contested and will be addressed in the Findings of Fact and Conclusions of Law. The record closed on the same day at the conclusion of the hearing.

II. EVIDENCE AND BASIS FOR DECISION

At issue in this case is the fair and reasonable hourly reimbursement for a pain management program delivered from October 23, 2001, to December 7, 2001. The Provider billed the program at the rate of \$175 per hour, which was its usual and customary rate. The Carrier reimbursed the Provider at the rate of \$125 per hour, a rate the Carrier's methodology established as fair and reasonable.

The parties previously contested the fair and reasonable rate for the Provider's chronic pain management program in Docket Nos. 453-03-2719.M4 and 453-01-2400.M5. In each case, the Carrier appealed the decision of the MRD finding the Provider's hourly rate of \$175 to be fair and

¹ The parties stated that effective August 1, 2003, the \$125 per hour rate was established as the new maximum allowable recovery rate (MAR) by the Commission. However, the services at issue were delivered prior to August 1, 2003, and will be analyzed pursuant to the rule in effect at that time, which did not provide a MAR.

reasonable. In the first case, the ALJ determined that the fair and reasonable rate was \$156 per hour, which was the average hourly rate charged to the Carrier by various CARF-accredited facilities.² The Provider requested reimbursement at the rate of \$175 per hour and the carrier paid at the rate of \$125 per hour. The Carrier argued that it had developed a payment rate based on a discounted average of various providers' usual and customary hourly charges and consistently paid this amount, as required by rule.³ The ALJ considered the parties' various methods for determining a fair and reasonable rate and found the \$156 average hourly rate of various CARF-accredited facilities to be the fair and reasonable amount.

In Docket No. 453-01-2400.M5, the Carrier reimbursed the Provider at the rate of \$125 per hour, the rate it paid to all providers of properly accredited pain management programs. The Provider had billed at the rate of \$175 per hour for the chronic pain management program. The ALJ found that the \$175 per hour rate fell within the range typically billed and reimbursed for pain management programs in North Texas, and that the billed amount was a fair and reasonable charge.

The facts presented in this case are essentially the same as the facts presented in Docket Nos. 453-03-2719.M4 and 453-01-2400.M5. Unlike the two previous cases, the Provider is the appellant and has the burden of proof. The MRD found that the Carrier's \$125 hourly rate was fair and reasonable.

Michael Walker, Ph.D., testified on behalf of the Provider that \$175 has been the usual and customary hourly charge since 1992. Also, Dr. Walker testified that a survey of 45 insurance carriers reimbursing the Provider for chronic pain management services found the \$175 per hour rate was the most frequently reimbursed amount, and that \$140 per hour was the average amount paid by the carriers. He further stated that the Provider has previously accepted reimbursement of \$140 per hour, and that \$140 per hour would be appropriate in this case.

Marilyn Balsam, manager of the Carrier's clinical review department, testified that the Carrier attempted to achieve a balance between quality care and cost containment when it determined that \$125 was a fair and reasonable amount to consistently pay. In reaching this amount, the Carrier developed several methodologies which considered such things as the services provided during a chronic pain management program, average charges and reimbursement, standard program structure

² CARF is an acronym for the Commission of Accreditation of Rehabilitation Facilities.

³ 28 TEX. ADMIN. CODE § 133.304(i) provides:

Because there is no established maximum allowable reimbursement for chronic pain management services, a Carrier is required to:

- (1) develop and consistently apply a methodology to determine fair and reasonable reimbursement amounts to ensure that similar procedures provided in similar circumstances receive similar reimbursement;
- (2) explain and document the method it used to calculate the rate of pay, and apply this method consistently;
- (3) reference its method in the claim file; and
- (4) explain and document in the claim file any deviation from an individual medical bill from its usual method in determining the rate of reimbursement.

and individual components, standard program hours, and combined individual components. The various methodologies used by the Carrier established that \$125 was a fair and reasonable hourly rate, which the Carrier has consistently paid to CARF-accredited providers.

The ALJ finds the decision in Docket No. 453B03-2719.M4 convincing. In line with that decision, the ALJ concludes that the Provider should be reimbursed at an hourly rate of \$140. Of the various methodologies testified to by the parties, the one based on the average amount paid to the Provider by all carriers seems most logical and consistent with the prior decision.⁴

III. FINDINGS OF FACT

1. A workers' compensation claimant suffered a compensable injury under the Texas Worker's Compensation Act (the Act), TEX. LABOR CODE ANN. § 401.001 *et seq.*, on ____, when his employer had workers' compensation coverage with the Liberty Mutual Fire Insurance Company (Carrier).
2. The claimant's subsequent treatment included a pain management program from October 23, 2001, through December 7, 2001, at Lake Arlington Center for Pain Management (Provider).
3. A total of 231 hours of services were provided.
4. The Carrier paid \$125 an hour for the services, even though the Provider billed \$175 an hour for them.
5. Provider made a timely request to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) for medical dispute resolution with respect to the disputed reimbursement.
6. The MRD did not recommend additional reimbursement. The order reflected a determination that \$125 per hour is a fair and reasonable rate for pain management program services.
7. On March 4, 2003, the Carrier requested a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision regarding reimbursement.
8. The amount in controversy is \$11,550.
9. The Commission mailed notice of the hearing's setting to the parties at their addresses on May 30, 2003.

⁴ The methodologies used to determine a fair and reasonable hourly rate are admittedly not the same, but both are based on actual averages either billed to carriers or paid by carriers. Each methodology provides a broad-based basis to support the requested payment amount.

10. The notice included the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. At the hearing on August 13, 2003, attorney Charlotte Salter represented the Carrier, and attorney Peter Rogers represented the Provider.
12. The average hourly rate for chronic pain management services paid to the Provider by various carriers was \$140 an hour.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to decide the issues presented pursuant to §413.031 of the Act.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Provider, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
5. The Provider properly effected an appeal of the MRD decision to SOAH.
6. A rate of \$140 per hour for chronic pain management services is a fair and reasonable charge, consistent with 28 TAC § 133.1(8) and § 413.011 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the Carrier should reimburse the Provider an additional amount of \$3,465.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Fire Insurance Company reimburse Lake Arlington Center for Pain Management, now known as North Texas Pain Recovery Center, for fees incurred in treating the Claimant in the amount of \$3,465.

ISSUED this 6th day of October, 2003.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS