

**SOAH DOCKET NO. 453-05-1451.M4  
TWCC MR NO. M4-04-A511-01**

<b>METROPOLITAN TRANSIT AUTHORITY</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>HARRIS COUNTY,</b>	§	
<b>Petitioner</b>	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>RS MEDICAL,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>		

**DECISION AND ORDER**

Metropolitan Transit Authority Harris County (Carrier) appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD),<sup>1</sup> which awarded additional reimbursement to RS Medical (Provider) for the use and purchase of an RS4i neuromuscular stimulator. The instrument was rented on June 27 and July 27, 2003, and purchased on November 11, 2003. In this decision, the Administrative Law Judge (ALJ) finds Provider is entitled to additional reimbursement from Carrier in the amount of \$200.00 for the rental of the RS4i, but no further reimbursement for the purchase of the RS4i.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction or notice. Those issues are addressed in the findings of fact and conclusions of law without further discussion here.

---

<sup>1</sup> Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation with the Texas Department of Insurance.

The hearing in this matter convened and closed on October 17, 2005, at the State Office of Administrative Hearings (SOAH) before Steven M. Rivas, ALJ. Carrier appeared and was represented by Steve Tipton, attorney.<sup>2</sup> Provider appeared and was represented by Patrick Cougill.<sup>3</sup> The record remained open to allow the parties an opportunity to file written briefs. After a series of deadline extensions, the record closed on February 3, 2006.

## II. DISCUSSION

### A. Background Facts

This case concerns the proper level of reimbursement for the rental and purchase of an RS4i neuromuscular stimulator, a piece of durable medical equipment (DME). Claimant suffered a compensable back injury on \_\_\_\_, and was prescribed an RS4i neuromuscular stimulator to treat his compensable injury. Claimant rented and used the RS4i on two occasions and later purchased the instrument. Provider requested reimbursement from Carrier in the amount of \$2,995.00. Carrier provided reimbursement for the rental and purchase of the RS4i, but at a lower rate. The amount billed, the reimbursement provided, and the amounts in dispute are shown below:

---

<sup>2</sup>Carrier argued it should not have the burden of proof in this case and filed a brief in support of this contention. However, after consideration of its position, the ALJ presided over this case with Carrier having the burden of proof pursuant to TEX. LAB. CODE ANN. § 413.031, because Carrier was the Petitioner in this case.

<sup>3</sup>Mr. Cougill is an attorney licensed in Washington state, and authorized to represent Provider in Texas.

<u>Date of Service</u>	<u>Amount Billed</u>	<u>Amount Paid</u>	<u>Amount in Dispute</u>
6/27/2003 (rental)	\$ 250.00	\$150.00	\$100.00
7/27/2003 (rental)	250.00	150.00	100.00
11/11/2003 (purchase)	<u>2,495.00</u>	<u>495.00</u>	<u>2,000.00</u>
Total	\$2,995.00	\$795.00	\$2,200.00

**B. Applicable Statutes**

This case involves two sets of applicable statutes. The first set, the 1996 DME Ground Rules, apply to the rental of the RS4i for dates of service June 27 and July 27, 2003. Pursuant to Paragraph IV, there is no specific maximum allowable reimbursement (MAR) amount for DME items. Instead, Paragraph IV states, in pertinent part,

. . . the insurance carrier shall reimburse the DME provider at . . . if there is no pre-negotiated amount, the fair and reasonable rate for the item described. Use the miscellaneous HCPCS code, E1399, when no other HCPCS code is present for the DME. . . .

Additionally, in regard to the rental rates, Subsection C of Paragraph IX of the 1996 DME Ground Rules reads as follows:

. . . Reimbursement shall be an amount pre-negotiated between the provider and carrier or if there is no pre-negotiated amount, the fair and reasonable rate. A fair and reasonable reimbursement shall be the same as the fees set for the “D” codes in the 1991 [MFG].

The next set of applicable statutes is the 2002 Medical Fee Guidelines (MFG), which applies to the purchase of the RS4i because it was purchased after August 1, 2003.<sup>4</sup> The applicable

---

<sup>4</sup> The 2002 Medical Fee Guidelines were initially adopted in April of 2002, and were to apply to services rendered on or after September 1, 2002. A temporary injunction against these rules was issued in August of 2002. On June 11, 2003, Judge John Dietz issued a Final Judgment indicating the new rules were valid and effective for services rendered on or after August 1, 2003.

guidelines for the purchase of the RS4i are found at 28 TEX. ADMIN. CODE 134.202(c)(6) and 134.202(d), which state in pertinent part:

(c) to determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications:

(6) for products and services for which CMS or the commission does not establish a relative value unit and/or a payment amount the carrier shall assign a relative value, which may be based on nationally recognized published relative value studies, published commission medical dispute decisions, and values assigned for services involving similar work and resource commitments.

(d) In all cases, reimbursement shall be the least of the:

(1) MAR amount as established by this rule;

(2) health care provider's usual and customary charge; or,

(3) health care provider's workers' compensation negotiated and/or contracted amount that applies to the billed service(s).

## **C. Evidence and Arguments**

### **1. Rental of RS4i**

Provider submitted its request for reimbursement using Code E1399 for both the rental and purchase of the RS4i. Carrier reimbursed Provider for the rental of the RS4i at the rate for a muscle stimulator. Provider contends the RS4i is not just a muscle stimulator, but rather a sequential device that incorporates both a muscle stimulation modality and an interferential modality. Because there is no "D" code for such a dual-modality DME, Provider asserts it should be reimbursed at a fair and reasonable rate for a device that contains both modalities. Provider argued it billed Carrier fair and reasonable rates.

Carrier contended the RS4i was no different than a muscle stimulator and, as such, should be reimbursed the same as a muscle stimulator or TENS unit. Carrier asserted \$150.00 per use was a

fair and reasonable rental rate because the RS4i was essentially the same as a muscle stimulator. In

support of this position, Carrier presented Susan Ackerman with Medical Business and Management Service, a company that performs bill reviews and audits. Ms. Ackerman testified that the RS4i was comparable to a neuromuscular stimulator or TENS unit.<sup>5</sup> Additionally, Ms. Ackerman stated all types of neuromuscular stimulators are similar to the RS4i. According to Ms. Ackerman, the only difference between the RS4i and other neuromuscular stimulators is that the RS4i allows a person to choose the number of channels (either 2 or 4) that emit the electrical energy. On cross-examination, Ms. Ackerman admitted the RS4i has both interferential and muscle stimulator modalities. However, Ms. Ackerman contended that based on the Medicare guidelines, which she consulted in this case, a neuromuscular stimulator and an interferential stimulator are basically the same.

Provider's Insurance Relations Manager, Susan Keese, testified on behalf of Provider that the RS4i unit is distinguishable from a TENS unit and neuromuscular stimulator because of its interferential modality. Ms. Keese pointed out the RS4i is different from a TENS unit because it has two separate modalities: an interferential and muscle stimulator. Additionally, Ms. Keese testified that Provider is able to supply medical equipment like a neuromuscular stimulator, TENS unit, or interferential device separate from the RS4i.

Provider also submitted documentation from the FDA that acknowledges both modalities. That documentation also indicates that the muscle stimulation modality is useful in relaxing muscle

spasms, increasing range of motion, and increasing local blood supply, while the interferential current modality is useful in providing acute pain relief and in managing chronic pain.

---

<sup>5</sup> A TENS unit is another electro-therapy device billed under CPT Code D0372 at the rental rate of \$95.00 per use.

## **2. Purchase of RS4i**

On November 11, 2003, Claimant purchased the RS4i. Provider billed Carrier \$2,495.00 for the purchase and Carrier reimbursed Provider \$495.00. Carrier argued it rendered proper reimbursement for the purchase of the RS4i based on its application of nationally recognized published relative value studies (Medicare), pursuant to 28 TEX. ADMIN. CODE 134.202(c)(6). In support of its position Carrier presented a spreadsheet of comparative pricing titled Summary of Medicare Prices Compared to VA, Medicaid, Retail, and FEHP Prices for 16 Items.<sup>6</sup>

The RS4i was not specifically listed as one of the 16 items on the summary. However, Medicare Code E0730 on the summary referred to the following equipment: TENS (transcutaneous and/or neuromuscular electrical nerve stimulators), four lead, larger area/multiple nerve stimulation. According to Ms. Ackerman, the Medicare guidelines view neuromuscular stimulators and interferential stimulators similarly.

Based on the documentation presented by Carrier, the median purchase price for a device billed under Code E0730 ranged from \$275.55 (VA price with markup) to \$645.00 (retail price). The Medicare median purchase price was \$365.76.

Carrier also called Charles Crane, M.D., who testified that he had experience in the use and pricing of the RS4i. Dr. Crane asserted the purchase price of all neuromuscular stimulation devices including those with dual modalities was relatively the same.

---

<sup>6</sup>Carrier's Submission of Documents Nos. 003 and 004.

#### **D. Analysis and Conclusion**

In this case, Carrier had the opportunity to utilize two separate reimbursement methodologies. The appropriate reimbursement methodology for dates of service prior to August 1, 2003, was outlined in the 1996 DME Ground Rules, which refer to the 1991 "D" codes in determining proper reimbursement for devices like the RS4i, which do not have a singular code or pre-negotiated amount. Because the rental of the RS4i occurred on June 27 and July 27, 2003, the 1996 DME Ground Rules governed those dates of services. In consulting the 1996 DME Ground Rules and 1991 "D" codes, it is apparent that the RS4i is not specifically mentioned and must therefore be reimbursed at a fair and reasonable rate pursuant to the 1996 DME Ground Rules. Based on the evidence that the RS4i has two separate modalities (neuromuscular and interferential), Carrier has failed to prove that \$250.00 was not a fair and reasonable rental rate. Therefore, Provider is entitled to \$200.00 additional reimbursement for the rental of the RS4i.

As for the purchase of the RS4i, Carrier was able to consult other reimbursement methodologies based on the 2002 MFG, which was in effect at the time of purchase on November 11, 2003. Because the Commission has not established a specific reimbursement rate for the RS4i, Carrier properly utilized Medicare payment policies, pursuant to the 2002 MFG. An examination of the Medicare policies with respect to devices similar to the RS4i reveals that Provider's requested amount was not fair or reasonable, although it reflects Provider's usual and customary charge of \$2,495.00. The ALJ believes reimbursement for the RS4i should be the maximum reimbursement rate established by rule 134.202, which is considerably lower than Provider's usual and customary charge. Carrier's reimbursement of \$495.00 is more than the median price paid by Medicare, VA (with markup), Medicaid, and FEHP for similar devices. The 2002

MFG allows Carrier to consult studies like the one performed by Medicare, where as the 1996 DME Ground Rules did not. Because Carrier’s reimbursement amount was more than several other sources, including Medicare, the ALJ believes Carrier has proven that it rendered a fair and reasonable reimbursement amount for the purchase of the RS4i.

For these reasons, the ALJ believes Provider is entitled to \$200.00 additional reimbursement for the rental of the RS4i, but no further reimbursement for the purchase of the RS4i.

### III. FINDINGS OF FACT

1. Claimant suffered a compensable back injury on \_\_\_\_.
2. Claimant was prescribed use of the RS4i neuromuscular stimulator and rented the RS4i on June 27 and July 27, 2003.
3. The RS4i was purchased on November 11, 2003.
4. RS Medical (Provider) submitted a request for reimbursement to Metropolitan Transit Authority Harris County (Carrier) for \$2,995.00 for the rental and purchase of the RS4i.
5. Carrier provided reimbursement for rental and purchase but at a lower rate than that billed by Provider.
6. The amount billed, the reimbursement provided, and the amounts in dispute are shown below:

<u>Date of Service</u>	<u>Amount Billed</u>	<u>Amount Paid</u>	<u>Amount in Dispute</u>
6/27/2003 (rental)	\$250.00	\$150.00	\$100.00
7/27/2003 (rental)	250.00	150.00	100.00
11/11/2003 (purchase)	<u>2,495.00</u>	<u>495.00</u>	<u>2,000.00</u>
Total	\$2,995.00	\$795.00	\$2,200.00

7. Provider filed a timely request for medical dispute resolution with the Texas Workers’ Compensation Commission (the Commission).

8. The Commission's Medical Review Division found in favor of Provider, and Carrier filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was provided to the parties on November 8, 2004.
10. 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.
11. The hearing was convened on October 7, 2005, with ALJ Steven M. Rivas presiding. Carrier appeared and was represented by Steve Tipton, attorney. Provider appeared and was represented by Patrick Cougill, attorney. The hearing was adjourned and the record remained open until February 3, 2006, to allow the parties time to file briefs.
12. The RS4i is a dual modality DME device that is not equivalent to a muscle stimulator only.
13. The muscle stimulation modality is useful in relaxing muscle spasms, increasing range of motion, and increasing local blood supply, while the interferential current modality is useful in providing acute pain relief and in managing chronic pain.
14. The rates at which Provider billed for rental of the RS4i were fair and reasonable.
15. Medicare has performed a study on the median purchase prices of devices similar to the RS4i.
16. The rate at which Provider billed for the purchase of the RS4i was not fair and reasonable.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission (or its successor agency the Texas Department of Insurance) has jurisdiction related to this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) 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. §2001.052.
4. Under 28 TEX. ADMIN. CODE (TAC) § 148.14(a), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
5. Carrier did not meet its burden of proving that Provider should be reimbursed at rates lower than the rates at which it billed for the rental of the RS4i.
6. Carrier met its burden of proving that Provider should not be reimbursed at the rate it billed for the purchase of the RS4i.
7. Provider is entitled to \$200.00 additional reimbursement for the rental of the RS4i, but no further reimbursement for the purchase of the RS4i.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Metropolitan Transit Authority Harris County shall provide additional reimbursement to RS Medical in the amount of \$200.00 for the RS4i rental on June 27 and July 27, 2003.

**SIGNED March 10, 2006.**

---

**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**