

DOCKET NO. 453-05-4168.M4
MDR Tracking No. M4-03-5826-01

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| STATE OFFICE OF | § | BEFORE THE STATE OFFICE |
| RISK MANAGEMENT | § | |
| Petitioner, | § | |
| | § | |
| VS. | § | OF |
| | § | |
| POSITIVE PAIN MANAGEMENT, | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

I. DISCUSSION

The worker's compensation claimant in this case underwent a chronic pain management program in 2002. The program was administered by Positive Pain Management (Provider). At issue in this case is the amount of reimbursement for eight hours of therapy on five days of service in June 2002.¹ Provider billed \$175.00/hour, or \$1,400.00 per day, for a total of \$7,000.00. The carrier, State Office of Risk Management (SORM), assumed that an eight-hour day of therapy included a one-hour lunch break and two 15-minute breaks, and reimbursed Provider \$74.00 per hour for a total of \$481.00 per day. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC or Commission) determined that \$100.00 per hour for eight hours a day constituted a reasonable level of reimbursement.² SORM requested a hearing.³

The 1996 Medical Fee Guideline (1996 MFG) applies to the services in question.⁴ The services were billed for under CPT Code 97799CP, the appropriate code for chronic pain

¹ The dates are June 10-14, 2002.

² The MRD decision is a little confusing because it assumes that SORM paid for eight hours of therapy per day and divides the total amount paid for each day B \$481.00 B by eight to conclude that SORM had paid \$60.13 per hour. Petitioner Exhibit 1 at 31. However, SORM clearly was paying for only 6.5 hours per day. *Id.* at 21, 24-25.

³ The MRD also determined that Provider's request for review concerning another date of service B April 18, 2002 B was untimely. *Id.* at 31. Provider filed no appeal with respect to this date of service, so this Decision and Order does not address it.

⁴ For services rendered after August 1, 2003, the 2002 Medical Fee Guideline is applicable. 28 TEX. ADMIN. CODE ' 134.202; *Texas AFL-CIO v. Texas Workers Compensation Commission*, 137 S.W.3d 342 (Tex. AppBAustin 2004).

management.⁵ The MFG establishes no maximum allowable reimbursement (MAR) for chronic pain management; rather, documentation of procedure is required to support the reasonableness of the charges.⁶ Where the Commission has not established an MAR for a service, fair and reasonable reimbursement is generally the lesser of: the health care provider's usual and customary charge, the determination of a payment amount for the medical treatment for which the Commission has established no maximum allowable reimbursement amount, or a negotiated contract amount.⁷

In determining that \$100.00 per hour was reasonable, the MRD cited the following factors:⁸

the Provider offered documentation, in the form of redacted explanations of benefits (EOBs) involving other carriers and showing that Provider typically bills \$175.00 per hour for chronic pain management and is usually reimbursed between \$100.00 and \$175.00 per hour;⁹

SORM had been inconsistent in its reimbursement, paying Provider approximately \$75.00 per hour for similar services rendered in April 2002; and

Provider agreed that \$100.00 per hour was reasonable.

SORM's position is that it has determined \$74.00 per hour to be a fair and reasonable charge for non-CARF¹⁰ accredited chronic pain management programs.¹¹ Further, SORM asserts that Arecent SOAH [State Office of Administrative Hearings] decisions@ have placed minimal value on EOBs as evidence of fair and reasonable charges.

⁵ 1996 MFG at 43.

⁶ 1996 MFG at 60.

⁷ 28 TEX. ADMIN. CODE §§ 133.1(a)(8); 133.307(g)(3)(D); 134.1.

⁸ See Petitioner Exhibit 1 at 31-32.

⁹ Those EOBs are in the record at Petitioner Exhibit 1 at 12-16.

¹⁰ Commission on Accreditation of Rehabilitation Facilities. For CARF-accredited chronic pain management, SORM has determined \$92.50 to be reasonable. Petitioner Exhibit 1 at 21.

¹¹ *Id.* At hearing, SORM pointed to a decision in SOAH Docket No. 453-01-1179.M4.

Provider's position is that the program was in fact for eight hours per day,¹² and its sample EOBs from other carriers show that it is ordinarily reimbursed at a rate higher than SORM's \$74.00 per hour.

The Administrative Law Judge (ALJ) concludes that the MRD's determination that Provider should be reimbursed at a rate of \$100.00 per hour for five eight-hour days should not be overturned.¹³ The evidence in this case is rather scant, but it does appear that other carriers have reimbursed Provider between \$800.00 and \$1,400.00 a day for chronic pain management services billed under CPT Code 9799CP.¹⁴ The SOAH decision cited by SORM B in SOAH Docket No. 453-01-1179.M4 B stated that EOBs are *one* way, although not the only way, of determining whether charges are fair and reasonable.¹⁵ Further, the ALJ sees no justification for reducing the number of reimbursable hours from the eight hours billed to the 6.5 hours paid for by SORM. The only evidence in the record on this issue indicates that eight hours of therapy were provided,¹⁶ and the MFG states that chronic pain management generally may involve up to eight hours a day.¹⁷

II. FINDINGS OF FACT

1. The State Office of Risk Management (SORM) is the workers' compensation insurer with respect to the claims at issue in this case.
2. The worker's compensation claimant in this case underwent a chronic pain management program in 2002. The program was administered by Positive Pain Management (Provider).

¹² Petitioner Exhibit 1 at 4.

¹³ At the contested case hearing at SOAH, counsel for SORM moved to have the ALJ declare the MRD decision null and void or, in the alternative, to remand this matter to the MRD, based on an assertion that Provider had offered documentation to the MRD without also providing it to SORM. These motions, however, were made solely on the basis of a comment by Provider's representative, just prior to the SOAH hearing and not on the record, that he thought perhaps there had been some clinic notes or other notes provided to the MRD. The comment, as the ALJ recalls it, was general, uncertain, and made in response to a query from the ALJ about what documents the parties had sent to SOAH prior to the hearing. Given such limited support for the assertion that Provider had wrongfully failed to provide SORM with the documents sent to the MRD, and given that the MRD decision makes no mention of such documents, the ALJ declines to grant SORM's motions.

¹⁴ Petitioner Exhibit 1 at 12-16.

¹⁵ SOAH Docket No. 453-01-1179.M4, Decision and Order at 17 (January 23, 2002).

¹⁶ Petitioner Exhibit 1 at 4.

¹⁷ MFG at 41.

3. At issue in this case is the amount of reimbursement for eight hours of therapy on each of five days of service B June 10 through 14, 2002 B billed under CPT Code 97799CP.
4. Provider billed \$175.00/hour, or \$1,400.00 per day, for a total of \$7,000.00.
5. SORM assumed that an eight-hour day of therapy included a one-hour lunch break and two 15-minute breaks, and reimbursed Provider \$74.00 per hour for a total of \$481.00 per day.
6. Provider requested medical dispute resolution.
7. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC or Commission) determined that \$100.00 per hour for eight hours a day constituted a reasonable level of reimbursement.
8. SORM timely requested medical dispute resolution.
9. Provider requested a hearing.
10. Notice of the hearing was issued February 16, 2005.
11. 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.
12. The hearing was convened on April 18, 2005, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. J. Red Tripp, attorney, appeared on behalf of SORM. Scott Worsham, an employee of Provider, appeared for Provider. The hearing adjourned, and the record closed, the same day.
13. The disputed dates of service each involved therapy for eight hours.
14. Other carriers have reimbursed Provider between \$800.00 and \$1,400.00 a day for chronic pain management services billed under CPT Code 9799CP.
15. A charge of \$100.00 per hour is a fair and reasonable fee for the chronic pain management services at issue.

16. The difference between the amount already paid to Provider for the services at issue B \$2,408.00 B and the total reimbursement for those services at a rate of \$100.00 per hour and eight hours per day B \$4,000.00 B is equal to \$1,595.00.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. TEX. LAB. CODE ch. 401 *et seq.* (the Act).
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ' 413.031; TEX. GOV'T CODE ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE ' 2001.052.
4. SORM has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' 148.14; TEX. LABOR CODE ' 413.031.
5. The 1996 Medical Fee Guideline (1996 MFG) applies to the services in question. 30 TEX. ADMIN. CODE ' 134.201(Commission's rule adopting the Medical Fee Guideline by reference). For services provided after August 1, 2003, the 2002 Medical Fee Guideline is applicable. 28 TEX. ADMIN. CODE ' 134.202; *Texas AFL-CIO v. Texas Workers Compensation Commission*, 137 S.W.3d 342 (Tex. AppBAustin 2004).
6. The MFG establishes no maximum allowable reimbursement (MAR) for chronic pain management; rather, documentation of procedure is required to support the reasonableness of the charges. 1996 MFG at 41, 60.
7. Where the Commission has not established an MAR for a service, fair and reasonable reimbursement is generally the lesser of: the health care provider's usual and customary charge, the determination of a payment amount for the medical treatment for which the Commission has established no maximum allowable reimbursement amount, or a negotiated contract amount. 28 TEX. ADMIN. CODE §§133.1(a)(8); 133.307(g)(3)(D); 134.1.
8. The foregoing Findings of Fact and Conclusions of Law support a determination that Provider should be reimbursed for eight hours of therapy, at a rate of \$100.00 per hour, for chronic pain management services administered to the claimant on each of the following days: June 10, 11, 12, 13 and 14, 2002.

ORDER

IT IS THEREFORE ORDERED that the State Office of Risk Management pay Positive Pain Management an additional \$1,595.00, plus interest, for the chronic pain management services provided to the claimant on June 10-14, 2002.

Signed June 13, 2005.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Shannon Kilgore
Administrative Law Judge