

**SOAH DOCKET NO. 453-02-3779.M4
DWC NO. M4-02-2219-01**

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|------------------------------------|---|--------------------------------|
| VISTA HEALTHCARE, INC., | § | BEFORE THE STATE OFFICE |
| Petitioner | § | |
| | § | |
| V. | § | OF |
| | § | |
| TEXAS MUTUAL INSURANCE CO., | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

Vista Healthcare, Inc. (Vista) challenges the denial of additional reimbursement by Texas Mutual Insurance Co. (TMIC) for a lumbar discogram provided to an injured worker on February 2, 2001, at Vista’s ambulatory surgical center (ASC). The Administrative Law Judge (ALJ) finds that the fair and reasonable reimbursement for Vista’s services rendered in connection with the ESI procedure is \$1,231.60.¹ Accordingly, Vista’s request for additional reimbursement is denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion.

Vista filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers’ Compensation (Division).² On June 6, 2002, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying Vista any additional reimbursement. Vista timely requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division’s determination. A hearing convened before ALJ Thomas H. Walston on March 27, 2012, at SOAH’s facilities in Austin, Texas. Vista was

¹ The physician’s services were billed separately and are not at issue in this proceeding.

² Effective September 1, 2005, the legislature dissolved the Texas Workers’ Compensation Commission (Commission) and created the Division of Workers’ Compensation within the Texas Department of Insurance. Act of June 1, 2005, 79th Leg., R.S., ch. 265, § 8.001, 2005 Tex. Gen. Laws 469, 607. This Decision and Order refers to the Commission and its successor collectively as the Division.

represented by attorney Christina Hernandez. TMIC was represented by attorney Bryan Jones. By agreement of the parties, the transcripts from SOAH Docket Nos. 453-03-0330.M4 (including TMIC Exhibits 9-15), 453-03-0306.M4, and 453-02-3036.M4 were incorporated by reference into the record of this case. The record closed on May 24, 2012, when the parties filed their closing briefs.

II. DISCUSSION

A. Applicable Law

This case is governed by the Tex. Lab. Code (Labor Code) § 401.001 *et seq.*, also known as the Texas Workers' Compensation Act (Act). The workers' compensation insurance program created by the Act covers all medically necessary health care.³ Although amended several times, Section 413.011 of the Act generally directs the Division's Commissioner to 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.⁴ The Act has consistently required that the fee guidelines for medical services be fair and reasonable, ensure quality medical care, and 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.⁶ In setting such guidelines, the increased security of payment afforded by the Act also must be considered.⁷

³ Labor Code § 401.011.

⁴ This section of the Act has been amended on several occasions as follows:

Acts 1993, 73rd Leg. ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.02, eff. Jun. 17, 2001; Acts 2003, 78th Leg., ch. 962, Sec. 1, 2, eff. Jun. 20, 2003.

Amended by:

Acts 2005, 79th Leg., ch. 265, Sec. 3.233, eff. Sept. 1, 2005.

Acts 2007, 80th Leg. R.S., ch. 1177, Sec. 2, eff. Sept. 1, 2007.

Acts 2007, 80th Leg., R.S. ch. 1177, Sec. 2, eff. Jan. 1, 2011.

⁵ Tex. Labor Code § 413.011(d).

⁶ Tex. Labor Code § 413.011(d).

⁷ Tex. Labor Code § 413.011(d).

Prior to May 9, 2004, the Division did not have a fee guideline for medical services provided in an ASC.⁸ In reimbursing providers for services without a fee guideline, an insurance carrier is required to reimburse at a fair and reasonable rate, as described in Section 413.011(d) of the Act.⁹ At the time the services at issue were provided, “fair and reasonable reimbursement” was defined as follows:

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

(C) a negotiated contract amount.¹⁰

Effective May 2, 2006, the Division defined “fair and reasonable reimbursement” as reimbursement that:

- (1) is consistent with the criteria of Labor Code § 413.011;
- (2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and
- (3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available.¹¹

When the Division has not established a fee guideline for a particular procedure, service, or item, the reimbursement amount is to be determined using the statutory factors. Under the Commission’s rules, carriers are required to develop and consistently apply a methodology to determine fair and reasonable reimbursement for services for which the Commission has not adopted a guideline.¹²

⁸ Effective May 9, 2004, the Division adopted a fee guideline for ASC services. 28 TAC § 134.402. By its terms, that fee guideline applies only to ASC services provided on or after September 1, 2004.

⁹ 28 Tex. Admin. Code § 134.1(f) from Oct. 7, 1991 until May 16, 2002, when it became 28 TAC § 134.1(c). On May 2, 2006, it became 28 TAC § 134.1(c)(3). On March 1, 2008 it was amended to become 28 TAC § 134.1(e)(3).

¹⁰ 28 TAC § 133.1(8).

¹¹ 28 TAC § 134.1(d)(1)-(3).

¹² 28 TAC § 133.304(i)(1) (eff. July 15, 2000); 28 TAC § 134.1(e) (eff. May 2, 2006).

B. Burden of Proof

As the party requesting a hearing before the State Office of Administrative Hearings (SOAH), Vista had the burden of proof by preponderance of the evidence.¹³ However, due to provisions of 28 TAC § 133.304(i)(1) and 28 TAC § 134.1(g) that require a carrier to develop an appropriate reimbursement methodology, the ALJ also required TMIC to make a showing that its payment met the statutory criteria.¹⁴

C. Discussion

The MRD Decision found that Vista did not establish the amount it requested was fair and reasonable. At the MRD, Vista sought recovery based on a percentage of its charges being considered as fair and reasonable reimbursement. At the SOAH hearing, Vista altered its theory and requested recovery based on the average of 176 payments it received from multiple payers for services it provided during 2001 in connection with lumbar discogram and myelogram procedures.¹⁵ These payments averaged \$5,941.12, which Vista asserted is a fair and reasonable charge. To support this position, Vista cited two recent Division medical fee dispute resolution decisions involving Renaissance Hospital. In those cases, the Division found that the average payment by all insurance carriers in the Texas workers' compensation system during the same year and involving the same procedures that Renaissance provided was the best evidence in those cases of an amount that would achieve a fair and reasonable reimbursement.¹⁶

In response, TMIC argued that Vista's methodology was flawed because Vista offered no evidence that the payments it received for myelogram and discogram services during 2001 were based on the criteria for fair and reasonable reimbursement established in the Act and the Division's

¹³ 1 TAC § 155.427 (eff. Nov. 26, 2008); 28 TAC § 148.21(h) - (i) (eff. Dec. 4, 1995); 28 TAC § 148.14(a) (eff. June 9, 2005).

¹⁴ 28 TAC § 133.304(i)(1) (eff. July 15, 2000); 28 TAC § 134.1(e) (eff. May 2, 2006; amended Mar. 1, 2008).

¹⁵ Vista Ex. 16.

¹⁶ Vista Exs. 8 and 9; MFDR Tracking Nos. M4-08-2454-01 and MR-08-0446-01; Vista's Post-Trial Brief.

rules. TMIC pointed out that the payments relied on by Vista varied widely from \$559 to \$13,750, and it argued that several payments would not qualify as fair and reasonable because they were based on a percentage of billed charges, which is an impermissible methodology. TMIC disagreed with the decisions rendered in the Renaissance Hospital cases. But even if they are accepted, TMIC stressed, the methodology in those cases averaged payments for the entire workers' compensation system, whereas Vista only averaged payments it received.¹⁷

TMIC also asserted that the amount it paid Vista was fair and reasonable reimbursement under the applicable standards. TMI noted that discograms are radiology procedures that contain a technical component and a professional component. The technical component is the payment to the facility to compensate it for providing the necessary personnel, services, equipment, and supplies. At the time of Vista's services, the Division had established a technical component maximum allowable reimbursement (MAR) in a fee guideline for diskograms performed at imaging centers. In this case, TMI paid that MAR amount to Vista for the procedure performed. It stressed that its payment of \$1,231.60 was well above the 2001 Medicare reimbursement amount of \$317.05 for the same procedure.

TMIC also offered evidence, including testimony from Mr. Richard Ball, that its payments ensured access to care; achieved effective medical cost control; did not exceed amounts paid on behalf of persons with an equivalent standard of living; and considered the security of payment afforded by the workers' compensation system. TMIC added that its payments were based on assigned values for services involving similar work and resource commitments, and its methodology has been approved by outside experts and in prior cases. Therefore, TMIC argued, its payment to Vista and its payment methodology were appropriate.¹⁸

Because Vista presented evidence only of payments it received from various payers, its theory of recovery was not fully consistent with the Division's decisions in the two Renaissance cases, as

¹⁷ TMIC post trial brief at 2-16; TMIC reply brief at 1-5.

¹⁸ TMIC post trial brief at 16-19; TMIC reply brief at 5-6.

TMI pointed out.¹⁹ Also, Vista presented no evidence about why the carriers and other payers reimbursed Vista the amounts they did or that those payments were based on the applicable criteria for fair and reasonable reimbursement. In short, Vista failed to establish how its proposed reimbursement level of \$5,941.12 complied with criteria contained in the Act and rules for fair and reasonable reimbursement. Therefore, Vista did not meet its burden of proof.

In contrast, TMIC presented specific evidence about how its methodology and its reimbursement amount did meet the applicable criteria. Therefore, TMIC established that its payment to Vista was a fair and reasonable reimbursement under the Act and rules.

D. Conclusion

Vista is not entitled to additional reimbursement from TMIC for the lumbar discogram services in question. The following table reflects the positions of Vista and TMIC and the MRD, as well as the ALJ’s finding that TMIC’s reimbursement was fair and reasonable.

| | Vista | TMIC | MRD | ALJ |
|-----------------------------|--------------|--------------|--------------|--------------|
| Charges | \$9,834.31 | | | |
| Reimbursement Amount | \$5,941.12 | \$1,231.60 | \$1,231.60 | \$1,231.60 |
| Less Payment | (\$1,231.60) | (\$1,231.60) | (\$1,231.60) | (\$1,231.60) |
| Balance Due Vista | \$4,709.52 | \$0.00 | \$0.00 | \$0.00 |

III. FINDINGS OF FACT

1. On February 2, 2001, Vista provided ASC services for administration of a lumbar discogram to a workers’ compensation claimant.
2. Vista provided the surgical facility, supplies, and other support functions for the surgical procedure. All ASC procedures are administered on an outpatient basis.

¹⁹ The ALJ offers no opinion and makes no decision on whether the methodology used in the Renaissance cases is valid for determining fair and reasonable reimbursement.

3. TMIC was the responsible workers' compensation insurer for the claimant.
4. Vista requested \$9,834.31 reimbursement from TMIC for its ASC services to the claimant.
5. TMIC reimbursed Vista \$1,231.60 for the ASC services.
6. At the time Vista provided the services, there was no fee guideline in place for ASC services.
7. TMIC applied its established methodology for fair and reasonable reimbursement to determine the amount it reimbursed Vista.
8. TMIC's methodology and reimbursement amount to Vista ensured access to care; achieved effective medical cost control; did not exceed amounts paid on behalf of persons with an equivalent standard of living; considered the security of payment afforded by the workers' compensation system; and were based on assigned values for services involving similar work and resource commitments.
9. Vista requested additional reimbursement for the services in dispute.
10. During 2001, Vista received 176 payments from multiple carriers and other payers for lumbar myelograms and discograms. These payments averaged \$5,941.12.
11. The payments to Vista ranged from \$559 to \$13,750.
12. Vista presented no evidence that the payments it received were based on the applicable criteria for fair and reasonable reimbursement.
13. Vista timely filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).
14. On June 6, 2002, the Division issued its Medical Fee Dispute Resolution Findings and Decision and found that no additional reimbursement was owed to Vista.
15. Vista timely requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
16. A Notice of Hearing informed the parties of the date, time, and location of the hearing, the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
17. A hearing convened before ALJ Thomas H. Walston on March 27, 2012, at SOAH's facilities in Austin, Texas. Vista was represented by attorney Christina Hernandez. TMIC was represented by attorney Bryan Jones. The record closed on May 24, 2012, when the parties filed their closing briefs.

IV. 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 § 413.031 and Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Tex. Gov't Code §§ 2001.051 and 2001.052.
3. The services provided to the Claimant were not covered by a fee guideline issued by the Division, and so were required to be billed and reimbursed at a fair and reasonable rate, within the meaning of Tex. Labor Code § 413.011.
4. Vista had the burden of proof in this proceeding by a preponderance of the evidence.
5. The Division's rules require a carrier to develop an appropriate reimbursement methodology.
6. TMIC's methodology and its reimbursement amount complied with the applicable criteria for fair and reasonable reimbursement.
7. Within the meaning of Tex. Labor Code § 413.011, \$1,231.60 is a fair and reasonable reimbursement for the services at issue provided by Vista.
8. Vista is not entitled to additional payment from TMIC for the services provided to the claimant.

ORDER

IT IS ORDERED that TMIC is not required to pay Vista any additional reimbursement for the services provided to the claimant.

SIGNED July 23, 2012.



THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS